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IN THE

Supreme Court of the United States.

October Term, 1954.

No. .

IN RE JOSEPH HOLMES, AN ALLEGED DELINQUENT MINOR.

PETITION FOR CERTIORARI.

Opinions Below.

The opinion of the Supreme Court of Pennsylvania is reported at 379 Pa. 599 (1a). The opinion of the Superior Court of Pennsylvania is reported at 175 Pa. Super. Ct. 137 (28a). The opinion of the Juvenile Division of the Municipal Court of Philadelphia is unreported (37a).

Jurisdictional Statement.

The Final Order of the Supreme Court of Pennsylvania was entered on November 23, 1954, which Order affirmed the Order of the Superior Court (9a). The Final Order of the Superior Court of Pennsylvania was entered on March 16, 1954 (28a), which Order affirmed the Order of the court below (36a).

On February 10th, 1955, Mr. Justice Burton granted an extension of the time, within which to file a petition for a writ of certiorari until March 14, 1955 (68a).

Jurisdiction to review the above-mentioned Order is conferred upon this Court by the Act of June 25, 1948, c. 646, 62 Stat. 929 (28 U. S. C. A. 1257).

Questions Presented.

1. Does the due process clause of the Fourteenth Amendment apply to juvenile court proceedings?

2. May a State, consistent with the equal protection clause of the Fourteenth Amendment, deprive juveniles in juvenile court proceedings of protections which are available to adults in both civil and criminal litigation?

3. To what extent does the Fourteenth Amendment limit a State's power to deprive children of their liberty as a result of juvenile court proceedings which are based on the sociological theory that children are the wards of the State?

Constitutional and Statutory Provisions Involved.

Amendment XIV to the Constitution of the United States, Section 1, provides in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

The pertinent sections of the Pennsylvania Juvenile Court Law are reprinted in the Appendix (63a-67a).

Statement of the Case.

On December 23, 1952, petitioner who was then sixteen years old was arrested by the Philadelphia police and detained for hearing by the Juvenile Division of the Municipal Court of Philadelphia (43a). This court was created by the Juvenile Court Act (Act of June 2, 1933, Pa. Laws 1433, 11 Purd. Stat. 243 et seq; App. 63a). Under that Act a juvenile delinquent, defined as a child under the age of eighteen, who has violated any law or ordinance (Sec. 1), may be committed to an industrial school or reformatory until reaching the age of twenty-one (Secs. 11, 12).

Petitioner's hearing was held on January 7, 1952 (43a).[1] At the hearing, petitioner was not represented by counsel, nor was he informed of any right to counsel. He was not advised of any right to refuse to answer questions which might tend to incriminate him, nor was he made aware that certain testimony was incompetent and inadmissible against him. Although the caption of the case indicates that the charge against the petitioner was "Alleged Delinquent" (1a), petitioner was not advised of the specific nature of the charges against him.

The Commonwealth's evidence tended to show that petitioner and two others were apprehended while operating a stolen automobile (43a). The court thereupon interrogated petitioner, but in so doing did not inform him of any rights he might have to refuse to answer the questions. Petitioner denied that he had participated in or had any knowledge of the larceny of the automobile. He stated that he had been informed by one Skeets Wideman that the automobile belonged to Skeets' uncle. This testimony was confirmed by the other witnesses (45a).

Petitioner answered in the negative the court's question whether Skeets had committed other crimes in 1949, 1951 and 1952, after which a police witness volunteered that Skeets was then involved in the robbery of a church. The Court then stated (44a):

> COURT: Joe, I am sorry, I do not believe this Skeets business at all.
>
> PETITIONER: Skeets signed a confession that he stole the car.
>
> COURT: Do you have a license, Joe?
>
> PETITIONER: No.
>
> COURT: You're a cute fellow, Joseph, but there is nothing I can do for you today. We are holding you

1. Petitioner was confined from the day of his arrest until the hearing on January 7, 1953, a period of two weeks.

until the other case comes up. *We will mark him guilty on this charge.* Hold him at the *county prison* pending the other hearing.[2] (Emphasis supplied.)

After sixteen days in the county prison,[3] petitioner appeared in the same court on January 23, 1953 (46a). Again he had no counsel, was not informed of any right to counsel, nor as to any rights he might have as to any aspect of the hearing. There is no indication in the record that petitioner was even aware of the specific acts of which he was charged, save as they developed in the course of the hearing.

At this hearing, a police detective testified that two adults had confessed to a church robbery, and that their third party confession implicated petitioner. When the detective thereafter stated that petitioner was not present at the confession and had not been confronted with the confession, the Commonwealth did not offer the third party confession into evidence (49a).

There was no hint or suggestion of other evidence implicating petitioner in the robbery or in any other illegal or unlawful act. The Court nevertheless stated (49a):

> "Joseph, you have been before us too many times for me just to disregard this. Highway robbery in 1949, burglary in 1951, highway robbery in 1952, discharged from Pennypack House two months later, *and now this.*

2. The Preambles of the original Juvenile Court Act of 1903, P. L. 274, and that of the current Act each state the basic purpose of the Act was to permit separate judicial proceedings for juveniles because "* * * the welfare of the Commonwealth demands that children should be guarded from association and contact with crime and criminals * * *, Experience has shown * * * that the real interest of * * * children require that they be not incarcerated in jails and penitentiaries, as members of the criminal class, * * *."

3. The Philadelphia County Prison contains no separate facilities for the detention of juveniles. The inmates are almost entirely adults, either awaiting trial or serving sentence.

The County Prison is a 120 year old structure which is periodically the subject of public comment, both as to its over-crowded condition and its dungeon-like appearance and atmosphere.

I am sending you to Whitehill." (Emphasis supplied.)[4]

"Whitehill" is the short name for the Pennsylvania White Hill Industrial School. To that institution are sent persons who have been adjudicated juvenile delinquents as a result of proceedings similar to the instant proceedings. Also sent to Whitehill are certain first offender felons.[5] The two groups are not segregated and there is no distinction in their treatment. All are confined nightly in similar locked cells.

Some time after the conclusion of the second hearing, petitioner retained counsel. Counsel sought and obtained a rehearing of the juvenile delinquency adjudication.

At the rehearing, on March 6, 1953, the Commonwealth called as a witness Skeets Wideman. Wideman denied that petitioner had participated in either the larceny of the automobile or the robbery of the church. Wideman admitted he confessed to those crimes, but stated that the confession was incorrect as to any implication that petitioner participated in either crime (57a).[6]

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4. At the age of thirteen, in 1949, petitioner was adjudicated a juvenile delinquent in a hearing arising out of a charge that he had been involved in a highway robbery. Petitioner was not committed to an institution as a result of that adjudication. In 1951, petitioner was held on a juvenile delinquency charge of burglary, but, as the Juvenile Court subsequently conceded (37a), was exonerated on this charge. In 1952, petitioner was committed to Pennypack House, an institution for juveniles, for two months, as a result of a juvenile delinquent hearing involving a charge of highway robbery and assault and battery by fist (38a).

5. Under Section 18 of the Juvenile Court Act, a minor who is charged with a serious offense may be remitted to the criminal court, the Court of Quarter Sessions, by the Juvenile Court, and the minor is there treated as a normal criminal defendant. Under the Act of July 29, 1953, Pa. Law. 1447, minors between the ages of fifteen and twenty-one, who are sentenced in a criminal court, may be committed to Whitehill if not known to have been previously sentenced to a State penitentiary. If the Juvenile Court does not remit the minor to the criminal court, he is tried on charges of juvenile delinquency, as here, in the Juvenile Court but nevertheless may be committed to Whitehill.

6. When the attendant detective was asked if Wideman's confession had been forced, he replied, "Not at that time" (58a).

There was no evidence at this rehearing which indicated that petitioner had driven the stolen car without a license, nor was there any affirmative evidence linking petitioner with either the larceny of the automobile or the robbery of the church. To the contrary, the testimony again showed that petitioner had been told that the car belonged to Skeets' uncle (52a).

On the basis of this record, the trial court stated (59a):

> "I again adjudge him a delinquent for both his participation in the burglary and his driving around in a stolen car without a license while on probation . . ."
>
> • • •
>
> "Under all those circumstances, and the fact that he was driving a stolen car without a license, and the fact that there is a confession existant implicating him in a robbery and burglary, and he was in the car when the burglary took place, anyone of which warrants my adjudging him a delinquent, I will send him to Whitehill."

After rejecting petitioner's offer to show that his aunt and uncle would provide him a good and competent home, the Court stated (60a):

> "I will take for granted they have a good home, but this is a matter of delinquency and I am remanding him to Whitehill."

The record then shows that the petitioner was "adjudged delinquent" (60a).

On May 6, 1953, the trial court filed an opinion.[7] In this opinion, the Court stated (40a):

> "At the conclusion of the rehearing, we reiterated our adjudication of delinquency and affirmed our prior

7. The opinion was filed as a result of notice to the court of an appeal to the State Superior Court. Opinions are not ordinarily otherwise filed.

commitment and ordered Holmes remanded to Whitehill."

The court further stated that, inasmuch as the Municipal Court had adjudged petitioner a delinquent in 1949, petitioner had been continuously on probation since that period and thus the court's 1953 adjudications were tantamount to revocations of probation (40a). The opinion nevertheless stated (41a):

> "Stripped of all extraneous matter, there is here sufficient legally admissible evidence to demonstrate that the further delinquency, that of driving a stolen car without an operator's license, was committed by Joseph Holmes."

The opinion also states (42a):

> "Only about one month later he was apprehended at the wheel of a stolen car and was implicated in an armed robbery of a very serious nature."[8]

The opinion further recites that the court considered in its determination to commit petitioner to Whitehill, petitioner's school records and letters from school authorities about petitioner. No reference was made to those school records or those letters at any of petitioner's hearings. Pe-

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8. Additional instances in which the court indicated that the hearings were for the determination of delinquency and not merely revocation of parole are (a) statements in the opinion: "He was charged with a delinquency consisting of larceny of an automobile" (38a). "It is to be noticed here that we inadvertently used the words 'We will mark him guilty on this charge' instead of 'We adjudge him a delinquent.' Such phrase was an unfortunate choice of words but it was intended and understood as an adjudication of delinquency" (39a). "On January 23, 1953, Holmes was before us on a delinquency charge involving robbery" (39a). (b) the court granted petitioner's petition for rehearing for a determination of delinquency (39a), (c) the notes of testimony contain the following statements by the court, "It is my understanding, Mr. Gomberg (Assistant District Attorney), that you are now merely limiting yourself to the establishment of delinquency" (51a).

titioner thus was denied all opportunity to question their accuracy.

On appeal, the Superior Court of Pennsylvania affirmed the order of the court below (36a), and, on certiorari, the Supreme Court of Pennsylvania affirmed (9a), rejecting petitioner's contentions that he had been deprived of his constitutional rights during the course of the hearings. The Supreme Court stated (3a):

> "The proceedings [in a Juvenile Court] are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and rehabilitation of the minor child. . . . Even though the child's delinquency may result from the commission of a criminal act the State extends to such a child, the same care and training as to one merely neglected, destitute or physically handicaped. . . ."
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> • • •
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> But since, as pointed out, Juvenile Courts *are not criminal courts,* the constitutional rights granted to persons accused of *crime* are not applicable to children brought before them. . . ." (Emphasis by the Court.)

The opinions of both the State Supreme and Superior Courts repeat from the Juvenile Court's opinion as if the school records and letters from school authorities referred to by the Juvenile Court (supra, p. 7) were established facts.

Method of Raising Constitutional Questions.

The allegations of denials of the subsections of the 14th Amendment and Article 1, Section 11, of the Pennsylvania Constitution were presented to and considered by both the Pennsylvania Superior and Supreme Courts. Recognition of those allegations appear in the opinion of the Supreme Court: "We allowed an appeal in this case from the order of the Superior Court because appellant's petition asserted

that questions of his constitutional rights were involved" (App. p. 2a) and "Appellant's * * * counsel has urged upon us, as upon the Superior Court, many claims of illegality and deprivation of constitutional rights in connection with the proceedings before the Municipal Court" (App. p. 3a).

Reasons for Granting the Writ.

1. The issues presented by this petition are of the most vital importance in the administration of justice to the children of this nation. Indeed, the District Attorney for the City of Philadelphia, who is charged with representing the Commonwealth of Pennsylvania in Juvenile Court hearings, has authorized petitioner to state that he urges the granting of the petition, because he believes that it presents questions of substantial importance.[9]

There is no need for petitioner to present a detailed exposition of the significance of the problem of juvenile delinquency. In the City of Philadelphia alone, the Juvenile Court handled 5170 cases in 1953, including many contested hearings. The problems of juvenile behavior and its treatment are constantly before us. Clearly, before many children's lives are ruined as a result of unfair or arbitrary decisions—made without the benefit of procedural due process—this Court should establish that juveniles, as well as adults, are entitled to certain minimum constitutional protections.

Petitioner is restrained of his liberty in an institution which holds indiscriminately both convicted felons and those who have been adjudcated juvenile delinquents. He has been committed to this institution as a result of a hearing which, it is fair to say, would not have been sustained by any State or Federal appellate court had the proceeding

9. The Attorney General of the Commonwealth appeared in the court below under Pennsylvania Supreme Court Rule 46 which authorizes appearance in that Court by persons interested in the questions involved, though not parties to the appeal.

been styled "criminal".[10] Yet the sole difference between this proceeding and a criminal trial—so far as offense and punishment are concerned—is that this proceeding has been labelled a "Juvenile Delinquency Adjudication". By some inverted logic, the State, which relies upon its role of *parens patriae* to establish juvenile courts, has granted to its children less protection than it accords to professional adult criminals.[11] This, despite the fact that that which is most dear to a child—his liberty, family and friends—have been taken from him by this proceeding.[12]

Petitioner does not contend that juvenile courts should be abolished. Petitioner believes they should be continued and perhaps extended. He does however contend that these courts which are a part of the judicial fabric should be required to observe minimum standards of fair play and due process. To say, as has the Supreme Court of Pennsylvania (4a), that "constitutional rights granted to persons accused of crime are not applicable to children before Juvenile Courts" (4a), is, to deprive of the basic protective guarantees of the Fourteenth Amendment those who are most in need of protection.

These guarantees are to be found neither in the opinions of the Pennsylvania courts, nor in the Juvenile Court Act itself. For example, the Act prohibits preliminary

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10. The vital concepts of due process and equal protection of the laws have not been static since 1903 when the original Pennsylvania Juvenile Court Act was enacted.

Why deprive juveniles of those dynamic concepts and adjudge, control and confine them by discarded or outgrown concepts?

11. If the court had certified petitioner's case to the criminal court, because the court believed a serious offense was charged, the petitioner would be entitled to all constitutional rights of one charged with the commission of a crime. A conviction by such a criminal trial would likely result in a commitment to the same institution where petitioner is now confined. See footnote 3 *supra*.

12. Paradoxically, this Court has constantly afforded a higher degree of constitutional protection to children than to adults. See *Uveges v. Pennsylvania*, 335 U. S. 437; *DeMeerleer v. Michigan*, 329 U. S. 663; Cf. *Palmer v. Ashe*, 342 U. S. 134.

hearings, but permits detention awaiting hearing (Sec. 4) (64a); it does not provide for giving the juvenile or his family notice of the hearing or notice of the specific subject of the hearing or for the issuance of subpoenas for defense witnesses. The requisite burden of proof upon the Commonwealth is not specified, nor is the question whether there is a presumption of innocence or violation. The Act makes no reference to rules of evidence. It specifies that the court's docket it not to be open to the public, a section which has been interpreted by the court to permit the exclusion of the public and the press from the hearings (Sec. 3) (63a). It contains no provision for the supplying of counsel for the indigent, nor is counsel actually supplied by public or private volunteers or by court appointment.

The Fourteenth Amendment provides that no person shall be deprived of his liberty without due process of law and that all persons are entitled to the equal protection of the law. Nothing in that amendment indicates, as the court below has held, that its protections are not to be afforded to children. As a result of the lack of such basic constitutional criteria petitioner has been deprived of his liberty. His case represents hundreds of thousands of hearings throughout the land. This Court is the ultimate tribunal to decide whether the Fourteenth Amendment applies to juvenile hearings.

2. The effect of constitutional limitations on the handling of juveniles has been considered by a number of State courts, whose conclusions have been far from uniform. Although we recognize that a contrariety of views among State appellate courts does not amount to a conflict of decisions within the meaning of the rules of this Court, the existence of such a divergence on basic constitutional questions does require resolution by this Court.

Basically involved here is the impact of the Fourteenth Amendment upon the sociological concept of the child as a

ward of the State.[13] The Supreme Court of Pennsylvania has stated (3a):

> "The concept that children are regarded as wards of the State is not of recent origin; indeed from the very earliest times children in England were regarded as the wards of Chancery and the Chancellor exercised the prerogatives of the Crown in acting for the care, treatment and protection of unfortunate minors and placing them under proper guardianship."
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> • • •
>
> "Even though the child's delinquency may result from the commission of a criminal act, the state extends to such child the same care and training as to one merely neglected, destitute or physically handicapped."
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> • • •
>
> "The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life."

Based on this theory, the Pennsylvania Supreme Court has sanctioned procedures by which children have been deprived of their liberty—procedures which it would not and could not have sanctioned had the defendant been an adult involved in either criminal or *civil* litigation. In sum, the State policy, as expressed by the court below is to treat children with the same arbitrariness as might be exercised by the child's natural parent, despite the fact that the exercise of this power is cloaked in judicial garb. Other State courts have reached a contrary conclusion. For example, in *Dendy v. Wilson*, 142 Tex. 460, the Texas Supreme Court held that juveniles were entitled to rely upon the privilege against self-incrimination. In *People v. Pikunase*, 260 N. Y. 72, 73, the Court of Appeals of New York stated:

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13. But cf. *Pierce v. Society of Sisters*, 268 U. S. 510, 535: "The child is not a creature of the State, * * *"

> "The record of this case is not a satisfactory one on which to deprive a 15 year old child her liberty, with proper regard for due legal process . . . it is . . . reasonable to require that some form or forms of juvenile delinquency be charged in the complaint, established by the evidence, and found by the court before the child may be committed to disciplinary institutions, so that it may appear that it is the law which determines the commitment and not the ukase of the magistrate, however wise and judicious he may be."

And the same court in *People v. Lewis,* 260 N. Y. 171 (Judges Crane and Kellogg dissenting), while holding that the privilege against self-incrimination did not apply to juvenile delinquency proceedings, stated (p. 178) that these proceedings must include "a reasonably definite charge," "customary rules of evidence . . . as in civil trials," "preponderance of evidence," and that "hearsay, opinion . . . are all sources of error and have no more place in the Children's Courts than in any other court."

In re Contreras, 109 Cal. App. 2d 787, the California District Court of Appeal held that hearsay evidence is insufficient for the commitment of a juvenile charged with delinquency and that juveniles do not have lesser constitutional or statutory rights or guarantees than are afforded to adults. "In the final analysis the juvenile court is a judicial institution." But cf. *Ex parte Naccanct,* 328 Mo. 722; *Bryant v. Brown,* 151 Miss. 398; *Notes,* 67 A. L. R. 1082; 86 A. L. R. 1008.

The Children's Bureau of the United States Department of Health, Education and Welfare has stated:[14]

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14. Pamphlet "Standards for Specialized Courts Dealing with Children", published by the Children's Bureau of U. S. Department of Health, Education and Welfare in cooperation with the National Probation Association and the National Council of Juvenile Court Judges (1954) pp. 5, 7. Copies of this pamphlet are lodged with the Clerk of this Court.

"The rights of parents to care for their children and to exercise their discretion in meeting the needs of their children are basic to our society. Equally basic are the rights of children to maintain their personal liberty free from other than parental or normal community restraint, to live with their parents, and to have someone legally responsible for protecting their interests. Modern psychology, in emphasizing the importance to a child of his own parents, has only confirmed what tradition, religion, and common sense have long known to be true."

• • •

"Both the child and his parents are entitled to know the bases on which the State seeks to intervene and on which it predicates its plan for the care and treatment of the child. They are equally entitled to rebut these bases either directly by questioning witnesses, or indirectly by presenting facts to the contrary. This means that rules of evidence calculated to assure proceedings in accordance with due process of law should be applicable to children's cases.

• • •

"The State should not be able to interfere with the rights of the parents with respect to their child and assume jurisdiction over such child on the generalized assumption that the child is in need of the care or protection of the State or merely because it disagrees with the parent as to the 'best course to pursue in rearing a child.' Nor should it be authorized to take children from their parents 'merely because in the estimation of probation officers and courts, the children can be better provided for and more wisely trained as wards of the State.' "

In effect, the court below has held that rights which are accorded to others are not granted to children for as a parent may punish a child without recourse to judicial trial,

so may the State. Clearly, this raises important and substantial questions of deprivation of equal protection of the laws and of due process—questions which should be decided by this Court.

3. Petitioner has been committed to an institution where he is deprived of his liberty without the basic guarantees of due process or of equal protection. He has been tried without the assistance of counsel and without the right to cross-examine;[15] he has been deprived of the privilege against self-incrimination and was not informed of the specific charges against him; he has been committed on the basis of hearsay repetition of an alleged confession of a third party—of itself reversible error.

It is true that under the decisions of this Court, there is no federally protected privilege against self-incrimination and that the court below has held that petitioner is not entitled to a state-protected privilege. However, the arbitrary denial of this privilege by the State of juveniles, while adults in criminal proceedings are entitled to its protections, raises an important question of equal protection. Further, the Supreme Court of Pennsylvania has decided this case under the misconception that constitutional protections are unavailable to juveniles. Were this Court to hold that the Fourteenth Amendment is applicable to juvenile proceedings, upon reconsideration the Supreme Court of Pennsylvania might very well hold that the privilege against self-incrimination is applicable to juveniles. For these reasons alone this petition should be granted.

The fact that at times the courts below characterized the proceeding below as a revocation of probation does not militate against petitioner's contention that the protections of the Fourteenth Amendment should be applicable to these proceedings. For each of these proceedings is an individual

15. It is true that petitioner had counsel at the third hearing, but it is likewise true that the incriminating evidence—such as there was—was admitted during the first two hearings when he had no counsel.

adjudication of a factual and legal issue: whether a juvenile has committed an alleged offense and whether the commission of that offense warrants his commitment.[16] Cf. *Keenan v. Burke,* 342 U. S. 881; *Townsend v. Burke,* 334 U. S. 736. Finally, the Juvenile Court considered matters neither called to the juvenile's attention nor presented to him for an opportunity to refute, such as the letters from his school authorities and similar data. No sound reason appears why a juvenile should not be permitted to know and answer all charges which may effect the length of his commitment. The practice of considering documents whose content is not disclosed to the juvenile is manifestly a violation of his fundamental right to a fair hearing.

Conclusion.

On the basis of unfairness to petitioner alone, this petition should be granted. When this single case is multiplied by the thousands of juveniles who appear in juvenile courts, the problems clearly reach such a magnitude that this Court should speak.

Respectfully submitted,

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Attorneys for Petitioner.

16. It may also be pointed out that confinement is an extreme penalty for the offense on which petitioner's commitment appears to have been based: driving a car without a license. Indeed, the Children's Bureau pamphlet, *supra,* which deals at some length with procedures for handling juvenile traffic cases (p. 29) bears no suggestion that the instant minimal traffic transgression would warrant confinement.

Appendix.

OPINION OF THE PENNSYLVANIA SUPREME COURT.

HOLMES' APPEAL.

Argued October 5, 1954. Before STERN, C. J., STEARNE, JONES, CHIDSEY, MUSMANNO and ARNOLD, JJ.

Appeals, Nos. 245 and 280, Jan. T., 1954, from order of Superior Court, Oct. T., 1953, Nos. 138 and 139, affirming judgment of Municipal Court of Philadelphia County, No. 115670, in re Joseph Holmes, an alleged delinquent. Order affirmed.

Same case in Superior Court: 175 Pa. Super. Ct. 137.

Proceeding before Juvenile Court on petition alleging delinquency of minor. Before PROPPER, J.

Order entered adjudicating minor a delinquent and directing his commitment to Pennsylvania Industrial School. Juvenile appealed to the Superior Court, which affirmed the order of the court below. Appeal by juvenile to Supreme Court allowed.

William J. Woolston, for appellant.

Samuel Dash, Assistant District Attorney, with him *Michael von Moschzisker,* First Assistant District Attorney and *Richardson Dilworth,* District Attorney, for appellee.

Frank P. Lawley, Jr., Deputy Attorney General, with him *Harry F. Stambaugh,* Special Counsel and *Frank F. Truscott,* Attorney General, for Commonwealth, under Rule 46.

John Rogers Carroll and *Thomas A. Masterson* filed a brief for American Civil Liberties Union, amicus curiae.

OPINION BY MR. CHIEF JUSTICE HORACE STERN, November 23, 1954:

We allow an appeal in this case from the order of the Superior Court (175 Pa. Superior Ct. 137, 103 A. 2d 454) because appellant's petition asserted that questions of his constitutional rights were involved.

Appellant, Joseph Holmes, had been in trouble with the authorities several times before the proceedings which gave rise to the present appeal. In 1949, when he was 13 years of age, he was adjudged delinquent by the Juvenile Division of the Municipal Court of Philadelphia on a petition alleging that he was involved in a highway robbery, and he was then placed on probation. He was later accused of participation in a burglary, but that offense was not proved; however, he failed to attend school for long periods of time and in 1951 his probation was continued. He continued to be a persistent truant from school, and, in August, 1952, being charged with participation in a highway robbery and assault and battery, he was committed to Pennypack House and remained there until November of that year when he was again placed on probation.

This brings us to the hearing before the Juvenile Court on January 7, 1953, the delinquency petition alleging larceny of an automobile, operating an automobile without the owner's consent, and operating an automobile without a driver's license. There was definite evidence that the automobile had been stolen and appellant admitted driving it without a license but he denied guilty knowledge of the theft of the car. The Juvenile Court adjudged him delinquent on the charge of operating a motor vehicle without a license. Five days later a delinquency petition was filed alleging his participation in the armed robbery of a church. At a hearing on that charge held on January 23, 1953, the court revoked his probation and committed him to the Penn-

sylvania Industrial School at White Hill, basing this action on his prior record, his present activities, the failure of his parents to control him, and the desirability of his receiving the training provided in such an institution. Counsel for appellant thereupon intervened and requested a rehearing, which was held on March 6, 1953, and at which additional testimony was taken.[1] The court repeated its adjudication of delinquency and ordered Holmes remanded to White Hill. On appeal to the Superior Court this order was affirmed.

Appellant's able counsel has urged upon us, as upon the Superior Court, many claims of illegality and deprivation of constitutional rights in connection with the proceedings before the Municipal Court. Such claims, however, entirely overlook, in our opinion, the basic concept of a Juvenile Court. The proceedings in such a court are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and rehabilitation of the minor child. Their purpose is not penal but protective,—aimed to check juvenile delinquency and to throw around a child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the State acting as parens patriae. The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life. Even though the child's delinquency may result from the commission of a criminal act the State extends to such a child the same care and training as to one merely neglected, destitute or physically handicapped. No suggestion or taint of criminality attaches to any finding of delinquency by a Juvenile Court.

The conception that children are regarded as wards of the State is not one of recent origin; indeed from the very earliest times children in England were regarded as the wards of Chancery, and the Chancellor exercised the

1 Section 15 of The Juvenile Court Law evidently presupposed that additional testimony may be received at a rehearing because it provides that such testimony shall be taken down and transcribed by an official stenographer and made a part of the record in the case.

prerogatives of the Crown in acting for the care, treatment and protection of unfortunate minors and placing them under proper guardianship.[2] The first Juvenile Court was established in 1899. In our own Commonwealth The Juvenile Court Law of June 2, 1933, P. L. 1433, section 8, gave to the judges of the Municipal Court in Philadelphia the duty, after an inquiry of the facts at a hearing, to determine whether the best interests and welfare of a child and the State required the care, guidance and control of such child, and to make an order accordingly; by the amendatory Act of June 15, 1939, P. L. 394, the word "child," as used in the Act, is defined to mean a minor under the age of 18 years.

One of the principal contentions made by appellant is that he was improperly compelled to answer a question the answer to which involved self-incrimination, namely, whether he had a license to drive an automobile, to which he answered "No." Article I, Section 9, of the Constitution provides that "In all *criminal* prosecutions the accused . . . cannot be compelled to give evidence against himself." But since, as pointed out, Juvenile Courts *are not criminal courts,* the constitutional rights granted to persons accused of *crime* are not applicable to children brought before them, as was definitely held in the elaborate opinion of Mr. Justice BROWN in *Commonwealth v. Fisher,* 213 Pa. 48, 62 A. 198, which held the Act of April 23, 1903, P. L. 274, the forerunner of the present Juvenile Court Act, constitutional. It may be added that appellant was not "compelled" to testify; he was questioned in the same manner and in the same spirit as a parent might have acted, for who, under the theory of juvenile court legislation, the

2 There will be recalled the famous proceeding in which Lord Chancellor Eldon in 1817 deprived Shelley of the custody of his two children on the ground that he had deserted his wife, Harriet, (who had shortly before committed suicide) and thereafter unlawfully cohabited with Mary Godwin (whom he subsequently married); also on the ground that he apparently intended to inculcate in his offspring his own atheistic and anti-social opinions. The chancellor appointed a curator to take charge of the children. The proceedings are reported in Jacob's Chancery Reports, p. 266, sub. nom. *Shelley v. Westbrooke,* the Westbrooke being Harriet's father.

State was substituting. It is true that section 18 of The Juvenile Court Law provides that if the child had been held by a magistrate or justice of the peace for any offense, other than murder, punishable by imprisonment in a State penitentiary, the judge of the Juvenile Court might, if in his opinion the interests of the State required a prosecution of such case on an indictment, certify the same to the district attorney of the county, who should thereupon proceed with the case in the same manner as though the jurisdiction of the Juvenile Court had never attached. But such a certification could not be made after the Juvenile Court had made an adjudication of delinquency nor, perhaps, after any self-incriminatory examination of the child. That question is not here involved, but it may be noted that section 19 of the Act provides that "The disposition of a child or any evidence given in a juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court."

Appellant complains that the court received certain hearsay testimony in regard to the charge that he was implicated in the armed robbery of the church. It seems that one of the two men who were convicted of that crime had confessed to having committed it, and a detective testified at appellant's hearing as to the substance of that confession and that it implicated appellant. It is true that subsequently the man who had made the confession repudiated it and now stated that appellant did not participate in the robbery, but of course the judge was not obliged to believe his retraction. He admitted that he had made the confession and the fact that the testimony of the detective was technically "hearsay" was therefore wholly unimportant. Moreover, from the very nature of the hearings in the Juvenile Court it cannot be required that strict rules of evidence should be applied as they properly would be in the trial of cases in the criminal court. Although, of course, a finding of delinquency must be based on sufficient competent evidence, the hearing in the Juvenile Court may,

in order to accomplish the purposes for which juvenile court legislation is designed, avoid many of the legalistic features of the rules of evidence customarily applicable to other judicial hearings. Even from a purely technical standpoint hearsay evidence, if it is admitted without objection and is relevant and material to the issue, is to be given its natural probative effect and may be received as direct evidence: *Harrah v. Montour R. R. Co.*, 321 Pa. 526, 184 A. 666; *Sledzianowski Unemployment Compensation Case*, 168 Pa. Superior Ct. 37, 76 A. 2d 666. Moreover, there is nothing in the record to indicate that the judge who presided in the Juvenile Court acted in the final disposition of appellant's case on the basis of any conclusion that appellant had in fact participated in the armed robbery of the church.

Counsel for appellant demanded of the court the right to inspect the records of the proceedings in connection with appellant's case, claiming to be entitled thereto by virtue of the provision of section 3 of The Juvenile Court Law which provides that such records should be kept in a docket and should be open to inspection by the parent or other representative of the person concerned. The court granted this request as far as the notes of testimony were concerned but refused it as to the reports of probation officers. As the Superior Court properly held, the records referred to in the statute are obviously the ordinary petitions, docket entries, notes of testimony and court orders; the reports received by the court from probation officers are not entered in the docket as a part of the "records of the proceedings." It is true that ex parte information received by the court and not publicly disclosed cannot properly be made the basis of a finding of delinquency in the Juvenile Court any more than of any important adverse finding in a trial before a judge in any other court.[3]

3 As to ordinary criminal and civil courts: *Commonwealth v. Johnson*, 348 Pa. 349, 35 A. 2d 312; *Commonwealth ex rel. Ritter v. Ritter*, 91 Pa. Superior Ct. 563; *Commonwealth ex rel. Mark v. Mark*, 115 Pa. Superior Ct. 181, 175 A. 289; *Commonwealth ex rel. McClenen v. McClenen*, 127 Pa. Superior Ct. 471, 193 A. 83; *Commonwealt ex rel. Knode v. Knode*, 145 Pa.

However, this rule does not apply in connection with the determination of a *sentence* in a criminal court and, all the more, should not apply to the disposition of a case in a Juvenile Court. In *Williams v. New York*, 337 U. S. 241, the court pointed out that, as distinguished from the situation where the question for consideration is the *guilt* of a defendant, it has always been the right of a court in sentencing to consider information concerning the defendant's past life, health, habits, conduct, and mental and moral propensities, even though such information is obtained outside the courtroom from persons whom the defendant has not been permitted to confront or cross-examine. The court said: (p. 247) "Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial." And further (p. 249): "Under the practice of individualizing punishments, investigational techniques have been given an important role. Probation workers making reports of their investigations have not been trained to prosecute but to aid offenders. Their reports have been given a high value by conscientious judges who want to sentence persons on the best available information rather than on guesswork and inadequate information." If all this is true as applicable to a criminal court it is certainly a fortiori true in regard to proceedings in the Juvenile Court.

Counsel for appellant makes much of the contention that the hearings of January 23 and March 6, 1953, could not properly have been for the purpose of determining whether appellant's probation should be revoked because

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Superior Ct. 1, 20 A. 2d 896; *Commonwealth ex rel. Oncay v. Oncay*, 153 Pa. Superior Ct. 569, 34 A. 2d 839; *Commonwealth ex rel. Balick v. Balick*, 172 Pa. Superior Ct. 196, 92 A. 2d 703.

section 12 of The Juvenile Court Law provides that any amendment of an order made by it should be upon motion of the district attorney or a probation officer or upon petition of any other person in interest after notice both to the district attorney and a probation officer, and it is claimed that here there was no such motion made or petition presented. It is, however, wholly immaterial whether those hearings were initiated for the purpose of passing upon the revocation of appellant's probation or considering an adjudication of delinquency. Neither the district attorney nor any probation officer complains of any lack of notice. At the January hearing the court had revoked appellant's probation, and while, at the rehearing, it again adjudged appellant delinquent, the order remanding him to White Hill was in effect merely a reaffirmation of the revocation of the probation.

Complaint is made of the fact that it does not affirmatively appear from the record that notices of the hearings were given to appellant's parents. The parents of a child involved in a Juvenile Court proceeding should certainly be notified in regard to what ought to be to them a matter of supreme importance. It has been held to be "an abuse of discretion for a [juvenile] court to go into such hearing and adjudication without notice to the persons having custody of the child, and without an opportunity for them to be heard, unless imperious reasons exist therefor.": *Rose Child Dependency Case*, 161 Pa. Superior Ct. 204, 207, 208, 54 A. 2d 297, 298. However, the record definitely indicates a total lack of interest on the part of appellant's parents rather than any absence of notification to them on the part of the court. After counsel appeared in the case it must be assumed that he was in touch with them and that, if they had wanted to be present they would have been there instead of the uncle and aunt who did appear. Appellant's repeated derelictions are proof positive of the fact either that his parents were indifferent to his bad behavior or were unable to control him.

A final complaint is urged in regard to the court's commitment of appellant to White Hill on the alleged ground that the inmates of that institution are not restricted to delinquent juveniles but may include also persons convicted of crime in a criminal court, and that the purpose of The Juvenile Court Law is to guard children from association and contact with crime and criminals. Section 8 of The Juvenile Court Law, as amended by the Act of June 15, 1939, P. L. 394, provides that the court may "Commit any child over the age of sixteen years to any state industrial school or home for the reformation and correction of youths above the age of sixteen." The fact that the Act of July 29, 1953, P. L. 1447, provides that minors between the ages of fifteen and twenty-one who were sentenced in the criminal court may be committed to the Pennsylvania Industrial School if not known to have been previously sentenced to a State penitentiary does not make that institution a prison; the Act merely extends the benefits of reformatory treatment to minors even though convicted in the criminal court instead of being adjudged delinquent in the Juvenile Court. Commitments by the Juvenile Court to such institution are therefore proper and have been supported by the courts without question.[4]

The order of the Superior Court is affirmed.

Dissenting Opinion by Mr. Justice Musmanno:

In upholding the commitment of Joseph Holmes, a minor, to the Pennsylvania Industrial School at White Hill, a reformatory, the Majority uses the argument employed down through the centuries by Spartan parents, namely, that disciplinary treatment is administered to a child only for his own good. But this approach to the problem before us completely misses the target of inquiry. The question

4 *Trignani's Case*, 150 Pa. Superior Ct. 491, 28 A. 2d 702; *Weintraub Appeal*, 166 Pa. Superior Ct. 342, 71 A. 2d 823; *Commonwealth ex rel. Perino v. Burke*, 175 Pa. Superior Ct. 291, 104 A. 2d 163; *Commonwealth ex rel. O'Donnell v. Prasse*, 84 D. & C. Rep. 306.

is not *how* Joseph Holmes should be treated, but whether he should be "treated" at all.

There are two phases to every Juvenile Court proceeding: (1) Determination as to whether the juvenile involved is delinquent or not; (2) Decision as to whether the juvenile is to be returned to his home, placed in a foster home, or committed to a reform institution. It is the first phase with which we are most concerned in this appeal.

How is the presence or absence of guilt to be ascertained? In all civilized countries it is determined by following a certain organized procedure which assures to the accused an opportunity to assert his innocence, face his accusers, call witnesses in his behalf, obtain the services of counsel and be adjudged by an impartial tribunal. Nowhere in the world are the rights of an accused so jealously guarded as in the United States. The case before us, however, presents an amazing paradox in jurisprudence. This Court says, through a majority of the Justices, that certain constitutional and legal guarantees such as immunity against self-incrimination, prohibition of hearsay, interdiction of ex parte and secret reports, all so zealously upheld in decisions from Alabama to Wyoming, are to be jettisoned in Pennsylvania when the person at the bar of justice is a tender-aged boy or girl.

The Majority is of the impression that the adjudication of delinquency of a minor is not a very serious matter because "No suggestion or taint of criminality attaches to any finding of delinquency by a Juvenile Court." This statement stamps the judicial imprimatur on the declaration in Section 19 of The Juvenile Court Law that: "No order made by any juvenile court shall operate to impose any of the civil disabilities ordinarily imposed by the criminal laws of the Commonwealth, nor shall any child be deemed to be a criminal by reason of any such order or be deemed to have been convicted of crime." These words are put together so as to form beautiful language but unfortunately the charitable thought expressed therein does

not square with the realities of life. To say that a graduate of a reform school is not to be "deemed a criminal" is very praiseworthy but this placid bromide commands no authority in the fiercely competitive fields of every-day modern life.

A most disturbing fallacy abides in the notion that a Juvenile Court record does its owner no harm. The grim truth is that a Juvenile Court record is a lengthening chain that its riveted possessor will drag after him through childhood, youthhood, adulthood and middle age. Even when the ill-starred child becomes an old man the record will be there to haunt, plague and torment him. It will be an ominous shadow following his tottering steps, it will stand by his bed at night and it will hover over him when he dozes fitfully in the dusk of his remaining day.

It is equally a delusion to say that a Juvenile Court record does not handicap because it cannot be used against the minor in any court. In point of fact it will be a witness against him in the court of business and commerce, it will be a bar sinister to him in the court of society where the penalties inflicted for deviation from conventional codes can be as ruinous as those imposed in any criminal court, it will be a sword of Damocles hanging over his head in public life, it will be a weapon to hold him at bay as he seeks respectable and honorable employment. It is easy to say that the record will not be used in Court but it already has been introduced in this case against Joseph Holmes in the imperishable dockets of several Courts, it has been printed in the briefs which the world can read, and it will be published in the decisions of the Superior and Supreme Courts.

It would not be kind to name the many figures in the world of sports, politics, entertainment and letters who have been embarrassed, harassed and encumbered because of a Juvenile Court record. And when I see how the intended guardian angel of the Juvenile Court sometimes nods at the time that the most important question of all—

innocence or guilt—is being considered, I wonder whether some of these public figures may not have been unjustly tainted in their childhood.

Reading and studying the whole record in this case, it seems to me that a very erroneous idea pervades the reasoning of the judges throughout, namely, that a Juvenile Court hearing is simply an administrative procedure because its purpose eventually is to provide education, care and supervision over the subject of its jurisdiction. But when the minor is charged with what (as against an adult), would be a felony, and the minor denies the charge, the resulting proceeding can only be a judicial *contest* to determine conflicting facts and contentions; and, being such, it is a *trial* in every sense of the word. It was well said in *Heddon v. Hand,* 90 N. J. Eq. 583, that "It is idle to entertain the thought for a single moment that the legislature can change the nature of an offense by changing the forum in which it is tried."

The Majority of this Court, as well as the courts below, have spoken almost feelingly of the great care that the State bestows on a juvenile after he has been adjudged a delinquent, pointing out that the State thenceforth regards him not as a criminal but as a ward. But fairness and justice certainly recognize that a child has the right *not* to be a ward of the State, *not* to be committed to a reformatory, *not* to be deprived of his liberty, if he is innocent. The procedure for ascertaining the guilt or innocence of a minor may be designated a hearing or a civil inquiry, as the Majority says, but in substance and form it is a trial—a momentous trial which means even more than one which confronts an adult, because in the Juvenile Court trial the defendant's whole mature life still lies before him. And no matter how trained and experienced a Juvenile Court judge may be, he cannot by any magical fishing rod draw forth the truth out of a confused sea of speculation, rumor, suspicion and hearsay. He must follow certain procedures which the wisdom of centuries has established.

Although I do not agree with the conclusions reached by the Superior Court in this case, it certainly has pronounced the law accurately in declaring that the proceeding in a Juvenile Court hearing "is an action in a court of record, the court must have jurisdiction, its basic findings *must be supported by evidence and the rudiments of procedural due process and fair play must be observed. The record must be legally and factually adequate to sustain the findings of fact and order of commitment.* . . . The action of the juvenile court is always subject to appellate review and *correction for errors of law or abuse of discretion.*" (175 Pa. Superior Ct. 137.) * (Italics throughout mine, unless otherwise indicated.)

The distinguished Court of Appeals of New York State stressed as far back as November, 1932, that proceedings in Juvenile Courts (called Children's Court in New York) cannot ignore constitutional safeguards: "There must be a reasonably definite charge. *The customary rules of evidence shown by long experience as essential in getting at the truth with reasonable certainty in civil trials must be adhered to.* The finding of fact must rest on the preponderance of evidence adduced under those rules. *Hearsay, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling, the hopes and fears of social workers, are all sources of error and have no more place in Children's Courts than in any other court.*" (*People v. Lewis,* 260 N. Y. 171, 178.)

The same Court said in the case of *Peoples v. Fitzgerald,* 244 N. Y. 307: "Our activities in behalf of the child may have been awakened, but the fundamental ideas of criminal procedure have not been changed. These require a definite charge, a hearing, competent proof, and a judgment. *Anything less is arbitrary power.*"

The concept that in Juvenile Court the State acts as *parens patriae* is being somewhat overdone. Even if the State assumes the parental role, this assumption does not

* Footnote.

prove that, by divine omniscience, it cannot be other than just. It is not impossible for a father, or even a mother, to be unreasonable with offspring. What a child charged with crime is entitled to, is *justice* not a *parens patriae* which in time may become a little calloused, partially cynical and somewhat over-condescending. The child may not want to be treated parens patriaely, parens patriarchally, or parens patronizingly!

The argument is advanced throughout these entire proceedings that the State entertains no desire to punish a juvenile and, for that reason, some relaxation in strict court procedure is justified and even commendable. But informality may be at times carried to the point of confusion, sloppiness and unreliability. The appellee Commonwealth categorically declares in its brief that "commitment to an industrial school is not punishment." But it certainly does not come under the classification of pleasure. Calling a reformatory an "industrial school" does not mitigate its bleakness, loneliness and destitution of parental love and care.

What is punishment? It is the infliction of pain, sorrow, and grief. To take a child from the comfort of his home, the joy of his companions and the freedom of field, river and wood, and confine him to a building with whitewashed walls, regimented routine and institutional hours is punishment in the strictest sense of the word. To say, as the Commonwealth says, that this institutionalized incarceration is "for the care and treatment" of the juvenile does not make it any less abhorrent to the boy of spirit, health and energy.

The Commonwealth argues further in its brief that many constitutional restrictions against prosecuting authorities in a trial of adults in the criminal courts do not apply in Juvenile Court because the proceedings there do not constitute a criminal trial. From this it is argued that in Juvenile Court proceedings the rules of evidence may be relaxed. To say that the rules of evidence may be relaxed

in Juvenile Court is like saying that during a surgical operation on a child the surgeon may relax the rules of precise hygiene. Hygienic precautions in the operating room are taken to keep out microbes and germs of infection in the same way that rules of evidence in Court erect barriers to bar the microbes of lies, the germs of prejudice and the infection of rumor.

The proceedings before us for review involve three different hearings: January 6, January 23 and March 6, 1953. The Majority points out in its Opinion that at the first hearing, Joseph Holmes was charged with stealing an automobile, operating an automobile without the owner's consent and operating a car without a driver's license. The Majority concedes that there was no evidence which connected Holmes with larceny of an automobile. Joseph denied all knowledge of the theft but he was adjudged a delinquent on the charge of operating a motor vehicle without a license.

On January 23, 1953, Joseph Holmes came before the Court on the very serious charge of participation in the robbery of a church. The so-called evidence presented to establish his participation in this robbery is so devoid of every symptom of competence that were a District Attorney to attempt to produce this same kind of testimony against an adult defendant in Criminal Court, he would properly earn for himself the censure of the Court. At this Juvenile Court hearing on January 23rd a detective by the name of Ashmore was allowed to testify orally to an alleged confession by a third person who, he reported, charged Holmes with participation in the robbery. The detective did not exhibit the confession, he did not produce the confessor, and the defendant Holmes was not given an opportunity to face the stranger who had supposedly implicated him. The Majority, which would undoubtedly condemn such sham testimony if presented in a Criminal Court, accepts it implicitly here because it is introduced against a child in Juvenile Court. The Majority goes further. It even pays

a tribute to hearsay testimony and says that, unless objected to, it may be received as direct evidence. The statement that hearsay may be utilized to strike down a child charged with the most reprehensible of crimes—robbery of a church—is to me appalling.

Hearsay is merely a legal term for unconfirmed rumor. Pouring rumored scandal into the bent ear of blabbering busybodies in a pool room or gambling house is no more disreputable than pronouncing it with clipped accent in a courtroom. Hearsay is not dross in one proceeding and gold in another. It is a deceptive commodity which should not be accepted in any market of freedom except under the most unusual circumstances which certainly are not present here.

If someone actually made a confession implicating Joseph Holmes in the alleged robbery of a church, why was that person not brought into court? The sheer legal nullity of the hearing of January 23rd, insofar as it attached culpability to Joseph Holmes, could not be better shown than by the fact that the to-be-accused Holmes was not even informed beforehand that he was to be charged with armed robbery. This startling omission offends against the elemental standards of the most primitive trials.

The record of the entire hearing of January 23rd is scarcely recognizable as a responsible proceeding in an American court and especially a tribunal involving the liberty of a young citizen. Detective Ashmore testified: "In regard to these two boys here, Holmes and Richard Hodges, one of the boys that was arrested here had given a signed confession and they implicated these two boys." Ashmore then proceeded, as indicated above, to give an oral description of the statement supposedly signed by one Widman. The Court, instead of demanding the exhibition of the confession or, more imperatively, the appearance of Widman himself, listened to this fantastic hearsay and then asked: "What did Hodges and Holmes actually do in the holdup?" This question was not only improper but it re-

vealed a most serious lack of appreciation on the part of the Court as to its judicial duties. Ashmore had no knowledge of his own as to what Hodges and Holmes had done, he did not know whether Hodges and Holmes had participated in the holdup, and was in fact personally ignorant of facts as to whether there even was a holdup. The Court, brushing all this incompetence aside, and accepting Ashmore's ignorance as knowledge, his non-presence as presence and his irresponsibility as reliability, questioned this bearer of twice-told tales as follows: *"What did Hodges and Holmes do in the holdup?"*

And then, the only question put to Joseph Holmes on the grave accusation against him of armed robbery were the following: "By THE COURT (to Joseph Holmes) Q. What about it, Joseph? A. He came to my house and picked me up. I had nothing to do with it. Q. You were in on the robbery? A. No, I haven't been identified by anybody. Skeets said he's going to tell you I had nothing to do with it."

Ashmore was now permitted to testify to more heterogeneous hearsay and then the Court summed up: "I heard enough." On this "evidence," the Court stripped Joseph Holmes of his liberty, deprived him of his home and parental care, and committed him to the melancholy shadows of a corrective, juvenile reformatory.

In justification of this incredible procedure, the Majority, as heretofore stated, says that it is proper to receive hearsay when it is admitted without objection. What did Joseph Holmes know about objections? He is a minor. He had no lawyer to represent him. No one informed him as to his rights. He was not told he could object. A child in a courtroom amid a throng of police officers, probation officers, court attendants and other officials, with a judge officiating from a podium, is not apt to summon the audacity, even if he possessed the knowledge, to lift his voice and cry out that what a police officer testified to was hearsay, even if he knew what hearsay meant. Children are

usually brought up with the admonition that "they are not to speak unless spoken to." To convict a child of crime because he does not object to what a judge should never have allowed to be heard in the first place is, in my opinion, an unfairness that sheds none of its repellence because approved by an appellate court.

But there is something more extraordinary about this affair than I have already indicated. At the third hearing (the one on March 6, 1953) the heretofore missing Widman came into Court and repudiated the confession in which it was alleged he had implicated Joseph Holmes. But on this important disclosure the Majority makes the amazing observation: "Of course the judge was not obliged to believe his (Widman's) retraction." It cannot be denied that the Judge was not compelled to believe Widman. He was not obliged to believe anything that might be presented in exoneration of charges against Holmes. That is the prerogative of a Judge, and he needs to answer only to his conscience. But if a Judge chooses to close his ears to the words of the actual robber, it is difficult to understand why he should accept as gospel the erratic narrative of a third-handed listener of a distantly-told tale. But if, as the Majority suggests, the Juvenile Court Judge could disbelieve Widman's retraction, he then could only go back to the credibility-riddled narrative of Ashmore whose knowledge of the holdup was zero.

The Majority says that "there is nothing in the record to indicate that the judge who presided in the Juvenile Court acted in the final disposition of appellant's case on the basis of any conclusion that appellant had in fact participated in the armed robbery of the church." The record reports the following: "By THE COURT: (To Joseph Holmes): Q. Joseph, you have been before us too many times for me just to disregard this. Highway robbery in 1949, burglary in 1951, highway robbery in 1952, discharged from Pennypack House two months later, and *now this*. A. I had nothing to do with it. THE COURT: I am sending you to White Hill."

What did the Judge mean by "and now *this*?" He could only mean the robbery of the church because that was the *only* offense then under discussion. Moreover, his reference to highway robberies in 1949 and 1952 and a burglary in 1951 was not only gratuitous but unjustified. If the proof of participation in the past robberies and burglary was no stronger than that presented in connection with the church robbery one could well fear that Holmes has received little of the protection for minors for which Juvenile Courts were created. In point of fact, Joseph Holmes was never proved guilty of the crimes referred to. The Majority makes that admission at the very beginning of its Opinion, when it says: "In 1949, when he was 13 years of age, he was adjudged delinquent by the Juvenile Division of the Municipal Court of Philadelphia on a petition *alleging* that he was involved in a highway robbery . . . He was later *accused* of participation in a burglary, but that offense *was not proved* . . . and, in August, 1952, being *charged* with participation in a highway robbery and assault and battery, he was committed to Pennypack House."

One could almost be embarrassed in stating the question to be decided in this case. Candidly put, it is nothing less than: "Are children entitled to the protection of the Constitution of the United States and the Constitution of Pennsylvania?" It is almost like asking: Should children be fed, clothed and sheltered? And yet, this question (that is, the first one) has been answered in the negative by the Majority of this Court. We have apparently reached such a state of inevitable disputation in the law that one wonders if anything can ever be pronounced with juridical finality. We may yet hear a challenging of the law of gravitation, the law of cause and effect, and the law governing the planets as they swing through infinity in their appointed orbits in the universe.

Article 1, Section 9 of the Constitution of Pennsylvania states categorically: "In all criminal prosecutions

the accused hath a right to be heard by himself and his counsel, to *demand the nature and cause of the accusation against him, to meet the witnesses face to face,* to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; *he cannot be compelled to give evidence against himself, nor can he be deprived of his* life, *liberty* or property, *unless by* the judgment of his peers or *the law of the land.*" On January 23, 1953, Joseph Holmes' constitutional rights were invaded in that he was brought to trial without being informed of "the nature and cause of the accusation against him," he was not allowed to meet his accusing "witnesses face to face," and he was deprived of his liberty beyond "the law of the land." The constitutional provision quoted does not restrict the enumerated iron-clad guarantees therein to accused *adults.* It says *accused* without limitation of any kind. By what authority, then, do we exclude children from this vast reservation of protection?

If we were to accept the utterly illogical proposition that a child is better guarded by denying him the security of the above-mentioned constitutional guarantees, why shouldn't we then throw the same defensive armor around women who are invariably regarded as being less able to fend for themselves than men? And if the extravagant supposition is accepted that children and women are in a superior position of vantage *outside* the Constitution, why not turn out of the State's tabernacle of inalienable rights the crippled, the mutilated, the aged and the blind? Certainly they are entitled to the same privileges which go to helpless children and women.

The Juvenile Court jurisdiction was originally limited to children up to the age of 16 years; it has now been extended to minors under 18 years of age. The interesting development then presents itself that if, instead of being tried on January 23, 1953, Holmes had been brought into court on May 7, 1954 (his 18th birthday), he would have

been entitled to a jury trial. At a jury trial the Commonwealth could not possibly have sustained a conviction with the shamefully inadequate and incompetent so-called evidence presented in Juvenile Court on January 23rd. And with this irrefutable proposition before us, how can we accept the adjudication of delinquency in Juvenile Court when the evidence supporting it would have acquitted Holmes in Criminal Court? Is the good name of a citizen, to say nothing of his liberty, to depend on whether he is brought to trial sixteen months sooner or later?

The Majority contends that since "Juvenile Courts are not Criminal Courts the Constitutional rights granted to persons accused of *crime** are not applicable to children brought before them."

What the Majority says here is that the protection assured the most penitentiary-hardened adult criminal cannot be offered to children. Aside from the inhumanity embodied in such an observation it is subject to criticism for other reasons. In the first place, it is not true, for instance, that the constitutional immunity against self-incrimination is limited to criminal court trials. This immunity applies anywhere and everywhere; it applies to any proceeding which can conceivably end in a criminal prosecution. Practically every day the Fifth Amendment of the United States Constitution (in this respect the counterpart of Art. I, Sec. 9 of the Pennsylvania Constitution) is invoked before legislative committees which are certainly not branches of a criminal court. The immunity against self-incrimination may be invoked in the civil law courts and equity courts if one is asked a question the answer to which may become a link leading to involvement in criminal prosecution. The immunity can be used as a barrier against being questioned in a magistrate's court or before a justice of the peace. It can be employed anywhere except, according to the Majority, where it should, in all fairness, receive the highest sanction—in Juvenile Court. This Constitutional immu-

*The Majority italicizes *crime* in its Opinion. Is armed robbery not a crime? Is it less a crime because allegedly committed by a minor?)

nity is obviously intended to help those unjustly accused of wrongdoing. If then, it is handed to adults as a shield, why should it become a sword when the person accused is a child?

The Juvenile Court Law provides that if a minor is held for any offense (except murder) punishable by imprisonment in a state penitentiary, the judge of the Juvenile Court may certify the case to the district attorney. Although the Majority asserts that the minor is entitled to protection, it still will not make the bold statement that any self-incriminating evidence obtained from a child while still in Juvenile Court may not be used against him in any subsequent criminal proceedings. The farthest the Majority will go in guarding the interests of a child from whom self-incriminating evidence has been wrung, is to say that after a self-incriminating examination, a child's case "perhaps" should not be sent to the criminal court. *"Perhaps"* is a slender thread on which to suspend the constitutional rights of children obtained by their fathers and forefathers through hardship and sacrifice, not excluding the shedding of blood on the battlefields of the nation's wars. The district attorney in his able brief meets this situation quite objectively, and very candidly says: "It may be that after questioning a child concerning his participation in a crime, the nature of the answers of the child may convince the Juvenile Court judge that the interest of the state require the prosecution of the case on an indictment. If the Juvenile Court judge uses these answers for this purpose, and certifies the case over to the District Attorney, then *there can be no question but that the child was required to incriminate himself, since the effect of his answers directly placed him in jeopardy of criminal prosecution."*

The 14th Amendment to the Constitution of the United States guarantees to all citizens of the United States due process of law. No State law can abrogate this guarantee. It needs no citation of authority to establish that, included

within due process of law, are the right to face one's accuser, to summon witnesses in one's defense, the immunity of self-incrimination, and to employ counsel. Leaving aside the question of a jury trial which this Court held, in the case of *Commonwealth v. Fisher,* 213 Pa. 48, was not required in Juvenile Court procedure, there is nothing in the Juvenile Court Act which deprives minors of the constitutional safeguards above indicated.

Armed robbery is a crime. The Legislature may not, by changing the name of armed robbery to "juvenile delinquency", strip from any citizen the constitutional guarantees which are his when he is tried for armed robbery. If the Legislature may, by a mere change in terminology, take away from a 17-year old boy the safeguard which the parent law of the land assures to him, then it can take it away from 18-year old boys and 25-year old men. Who is to decide the dividing line? I do not believe that the Pennsylvania Legislature ever planned by The Juvenile Court Law to make it easier to convict boys than to convict men. I cannot bring myself to accepting the self-revolting idea that the Legislature intended that children should be deprived of their liberty on evidence that would walk their grown-up elders trimphantly out of criminal court. If there is anything in The Juvenile Court Law which by fair interpretation sanctions this unconscionable thing, I must say that such an un-American proposition is unconstitutional and I would, therefore, declare it null and void. The scholarly jurist, Judge CRANE of New York, in the case of *People v. Fitzgerald,* 224 N. Y. 307, spoke wisely, bravely and well when he said: "Where, therefore, a child is arrested and charged with being a delinquent child because it has committed an offense which would be a crime in an adult, *that offense must be proved, and proved by competent evidence.*"

The Children's Bureau of the U. S. Department of Health, Education, and Welfare, in cooperation with the National Probation and Parole Association and the *Na-*

tional Council of Juvenile Court Judges, has said in an authoritative pamphlet entitled, "Specialized Courts Dealing with Children," that: "*Rules of evidence calculated to assure proceedings in accordance with due process of law should be applicable to children's cases.*" (p. 7) Also: "A juvenile court hearing is sometimes spoken of as 'informal.' Informality should not, however, mean that the court ceases to be a court or becomes merely a conference in the judge's chambers. *Still less should it mean that the court ignores rules of evidence or fails to establish procedures for its actions.*" (p. 54)

No attorney appeared on the side of Joseph Holmes until the hearing (the third) of March 6, 1953. This attorney challenged, as he stated in his brief,—". . . the right of the Court to determine delinquency and commit to White Hill in the absence of evidence that appellant's parents had been notified of or had attended the prior hearings or that the parents were unable or unwilling to afford the required and requisite care and in the absence of admissible evidence in support of all but a minor alleged act of delinquency, operating an automobile without a license, and finally, any and all other reasons which might be assigned after an inspection of the record, which had been denied." All these objections were overruled by the lower court. Taking up the question of the parents' participation or non-participation in the Juvenile Court proceedings the Majority says that "The parents of a child involved in a Juvenile Court proceeding should certainly be notified in regard to what ought to be to them a matter of supreme importance," but it then goes on to say that: "Appellant's repeated derelictions are proof positive of the fact either that his parents were indifferent to his bad behavior or were unable to control him."

The Majority's conclusions in this respect can scarcely be placed in the catalogue of impeccable logic. The absolute lack of trustworthy evidence to establish that Joseph Holmes ever committed robbery, burglary or any other

serious crime is now used to show that his parents were indifferent or unable to control him. If Joseph is a bad boy, this should not be reason for charging his parents with indifference. Court records do not carry the cardiograph tracings of the heartache of parents. And if Joseph is as bad as the Majority says he is, is the Juvenile Court, acting as *parens patriae,* to be charged with inability "to control him"?

In taking up the defense attorney's complaint that he was denied the opportunity to examine all the Juvenile Court records on Joseph Holmes, the Majority launches an encomium on out-of-court reports obtained for the purpose of helping judges to impose the proper kind of sentence. No one doubts the helpfulness of reports of this character. But the question here is: Why wasn't defense counsel allowed to see those reports? Information, data and memoranda obtained *ex parte* do not always represent the apogee of neutrality. Where is the person who by himself or through some relative has not at some time displeased a neighbor or crossed words with a business, scholastic or occupational superior or associate? Reports obtained at residential back doors or in outer business offices without the presence of an impartial referee or the adverse party in interest are always in danger of carrying prejudicial slants resulting from the aroma of feuds which have long smoldered in the dustbin of self-pitying memory or have generated in the hothouse of imaginative hurts. For a judge to sentence on these secret reports without allowing the defendant's attorney to even see them for possible correction or explanation is to impose a sentence based on the utterances of phantoms. Our American traditions of fairness have always rebelled at secret reports, hearings or recommendations. The District Attorney well states this objective situation in his brief as follows: "A sound and thorough inquiry into the needs of the child as well as the state would seem to require scrutiny by the child's counsel of the materials to be used by the court in

the determination of ultimate disposition. Although at times, information will be contained in the probation reports which for the child's sake should not be revealed to him, *trust will have to be placed in counsel,* an officer of the court, to not betray the Court's confidence or the welfare of the child . . . Under our system of jurisprudence, *concealment of facts has never been recognized as an aid to justice.*"

I have unstinted admiration for the Juvenile Court system. It has undoubtedly saved countless children from a life of crime. Under no circumstances must we ever go back to the archaic and cruel system which mingled children with hardened and coarse offenders in both the criminal courts and in the jails. I cannot help but express astonishment at the Majority's statement that the old English law was ever ready to make needy children wards of the State. Instead of citing the case of Shelley's children, I would refer to the writings of Charles Dickens (particularly *Oliver Twist*) in which the sheer brutality in the treatment of unfortunate children makes one truly wonder at the contents of the hearts of both judges and civil administrators in the "good old days."

The law has come a long way in its consideration of the welfare of children since the days of *Oliver Twist,* but that does not mean that perfection has been attained. In its laudable zeal to care for unfortunate children, the State must not become a universal mother. Loving parents in a house with the porch creaking and the paint cracking can still offer more happiness and guidance to children than the most highly trained reformatory superintendent. Before the State can take a child from its parents, it must be determined that he comes within the provisions of the statute enacted by representatives of the people for waifs, misguided minors and tattered children caught between the millstones of economic calamity. The filing of a delinquency petition does not of itself prove that the named minor needs or must have a *parens patriae.* A love of

adventure, a careless weighing of possibilities, a mingling with strange playfellows can take an enthusiastic lad into a scrape and a confusion of circumstances which convey the appearance of a culpability not necessarily justified by the true facts. Hence, the imperative need for an inquiry which is organized, scientific and trustworthy, that is to say, a trial with all the safeguards which the centuries have proved to be essential in the business of finding the precious gem of truth.

The country today is plagued with considerable juvenile delinquency. The least effective way to solve that problem is to indiscriminately punish the guilty and the innocent. To charge a juvenile with armed robbery and then send him to a reformatory without legal proof that he has committed that heinous crime is to embitter not only him but all his companions who will feel that they no longer owe any loyalty to an unjust society.

The record of this case does not show that Joseph Holmes committed offenses which would justify the drastic treatment to which he has been subjected. The record clearly demonstrates that he was denied the due process of law which is the heritage of every American, regardless of age, color, sex or national derivation.

I would therefore require a re-hearing on all alleged offenses not constitutionally and legally proved.

OPINION OF THE PENNSYLVANIA SUPERIOR COURT.

Filed March 16, 1954.

Opinion by RHODES, *P. J.*

This appeal questions the legality of an order of the Municipal Court of Philadelphia, Juvenile Division, committing Joseph Holmes, aged 16, to the Pennsylvania Industrial School at White Hill, as a delinquent child under The Juvenile Court Law of June 2, 1933, P. L. 1433, as amended, 11 P. S. § 243 et seq.

Joseph Holmes was born on May 7, 1936. He was adjudged delinquent on August 19, 1949, by the Municipal Court of Philadelphia, Juvenile Division, upon a petition alleging that he was involved in a highway robbery. At that time he was placed on probation. Subsequently, on January 19, 1951, he was exonerated of participation in a burglary, and allowed to continue on probation, although his record showed absence from school for sixty-seven days of the current school year. Between January of 1951 and August of 1952, the school authorities advised the Juvenile Court of Holmes' persistent absence from school and the continuation of his truancies. Holmes was again taken into custody on August 18, 1952, for a delinquency involving highway robbery and assault and battery. After a hearing he was committed to Pennypack House for training, where he remained for two months, or until November 12, 1952, at which time he was discharged and placed on probation.

On December 23, 1952, Holmes was taken into custody on a delinquency petition alleging larceny of an automobile, operating an automobile without the owner's consent, and operating an automobile without a driver's license. He was given a hearing before the Juvenile Court on January 7, 1953. At this hearing Holmes denied knowledge that the

car was stolen and stated that he was told it belonged to an uncle of one of his companions. Holmes, however, admitted driving the car without a license. The Juvenile Court adjudged Holmes delinquent on the charge of operating a motor vehicle without a license, although in so doing the court inadvertently used the words "We will mark him guilty on this charge." Holmes was committed to the county prison pending a hearing on other charges.

On January 12, 1953, a petition was filed setting forth Holmes' delinquency by reason of his participation in an armed robbery of Our Lady of Victory Church at 54th and Vine Streets, Philadelphia. Wideman, a companion of Holmes in the stolen automobile, signed a confession and, upon a criminal trial, was convicted on the charge of armed robbery at the church. Wideman's signed confession, used against Wideman at the trial, implicated Holmes, Richard Hodges, and Charles Clark as participants in the robbery. However, at a hearing held on January 23, 1953, before Judge Propper on the delinquency petition, Hodges and Holmes denied knowledge that the car was stolen and denied participation in the robbery. At the conclusion of this hearing Judge Propper revoked Holmes' probation and ordered him committed to the Pennsylvania Industrial School at White Hill. In making the commitment Judge Propper referred to Holmes' prior record in the Juvenile Court. Meanwhile, counsel entered an appearance for Holmes. Appellant's attorney then sought permission to inspect the Juvenile Court file, including the reports of court investigators. The court permitted inspection of the notes of testimony and records of the Juvenile Court relating to Holmes, but denied the right of appellant's attorney to inspect the reports of court investigators. At the request of appellant and his attorney, the court granted Holmes a rehearing, which was held on March 6, 1953. Over objection of appellant's attorney, the Commonwealth offered additional evidence in an attempt to establish Holmes' delinquency as to the theft of the automobile and

participation in the church robbery. However, the Commonwealth's witnesses, Wideman and Clark, repudiating prior confessions, testified that Holmes, who was with them at the time, did not know the car was stolen and did not participate in the robbery. At the conclusion of this testimony the court, after reciting Holmes' record in the Juvenile Court, reiterated its adjudication of delinquency, basing such finding on participation in the robbery and driving a stolen car without a license while on probation. Accordingly, the court committed Holmes to the Pennsylvania Industrial School at White Hill. He has appealed from that order.

Appellant asserts that the adjudication of delinquency and the commitment violate his constitutional right and privilege against self-incrimination. As stated, Holmes had been adjudicated a delinquent as of August 19, 1949, at which time he was placed on probation. The jurisdiction of the Juvenile Court attached and the status of the minor as a delinquent was established from that time. As a delinquent he was on probation and subject to the jurisdiction and supervision of the court. The objective of the court under the doctrine of parens patriae is to promote the best interests of both the state and the child. On the basis of the original adjudication of delinquency, the court had the power to revoke its order placing the minor on probation, and to commit him to an institution for training. Actually, the commitment appealed from was justified under the prior adjudication of delinquency, and no question regarding the alleged right against self-incrimination is involved. If, however, we consider the delinquency petition filed December 23, 1952, relating to larceny of an automobile and the operation of a motor vehicle without a license, and the hearing, adjudication and commitment thereunder, as a separate proceeding, there is in any event no violation of the privilege against self- incrimination established. Article 1, § 9, of the Constitution of Pennsylvania provides: "In all criminal prosecution, the accused . . . cannot be compelled

to give evidence against himself, . . ." As clearly appears in Com. v. Fisher, 213 Pa. 48, 62 A. 198, dealing with the predecessor of the present Juvenile Court Law, a proceeding under such Law is not a criminal case, but rather a procedure intended to save a child who violates the law from the ordeal of a criminal trial, and to provide for his treatment under court supervision. It has been compared to an action in equity. The purpose underlying the Law is to avoid branding the child with the stigma of criminality and to insure the growth of the child as a useful member of society. Therefore many of the constitutional guarantees granted to one formally charged with a criminal offense are not applicable to a proceeding under the Juvenile Court Law. As stated in Com. v. Fisher, supra, 213 Pa. 48, 53, 62 A. 198, 200, ". . . there was no trial for any crime here, and the act is operative only when there is to be no trial. The very purpose of the act is to prevent a trial, though, if the welfare of the public require that the minor should be tried, power to try it is not taken away from the court of quarter sessions, . . ." A delinquency proceeding in a children's court is not a criminal trial, hence the privilege against self-incrimination does not apply to the questioning of the juvenile. 8 Wigmore, Evidence, § 2252, n. 10 (3rd Ed.); People v. Lewis, 260 N. Y. 171, 183 N. E. 353, 86 A. L. R. 1001 (certiorari denied in 289 U. S. 709, 53 S. Ct. 786, 77 L. Ed. 1464); 31 Am. Jur., Juvenile Courts and Offenders, § 42, p. 807.

Furthermore, ordinarily, when the juvenile court assumes jurisdiction, makes an adjudication of delinquency and commits a child, it could not certify the case to the court of quarter sessions for criminal prosecution based on the same violations of law. Trignani's Case, 150 Pa. Superior Ct. 491, 28 A. 2d 702.

Section 19 of The Juvenile Court Law of 1933, 11 PS § 261, provides: "No order made by any juvenile court shall operate to impose any of the civil disabilities ordinarily imposed by the criminal laws of the Commonwealth,

nor shall any child be deemed to be a criminal by reason of any such order or be deemed to have been convicted of crime. The disposition of a child or any evidence given in a juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court." It is settled that constitutional guarantees applicable to criminal proceedings are inapplicable to proceedings in the juvenile court. Ex parte Januszewski, 196 F. 123; Cinque v. Boyd, 99 Conn. 70, 121 A. 678; Ex parte Sharpe, 15 Idaho 120, 96 P. 563; Lindsay v. Lindsay, 257 Ill. 328, 100 N. E. 892; Wissenberg v. Bradley, 209 Iowa 813, 229 N. W. 205; Ex parte Naccarat, 328 Mo. 722, 41 S. W. 2d 176; Gerak v. State, 22 Ohio App. 357, 153 N. E. 902; Com. v. Fisher, supra, 213 Pa. 48, 62 A. 198; Petition of Morin, 95 N. H. 518, 68 A. 2d 668. The proceeding in juvenile court is not in substance adverse; nor is it wholly ex parte matter. In exercising its jurisdiction under the Law, the juvenile court functions as a court of law and the elemental essentials of due process and fair play should be observed.

Appellant also claims the adjudication of delinquency and the order of commitment are invalid because based on hearsay evidence. Again, strictly speaking, the question of the admissibility of hearsay evidence in the juvenile court proceeding does not here arise since the present commitmnt could rest on the prior adjudication of delinquency and the revocation of probation. In any event there is sufficient admissible evidence in the record to support the court's finding of delinquency based on the violations of the law set forth in the delinquency petition of December 23, 1952. Appellant admitted operating the automobile without a license, though he denied knowing that it had been stolen; he also denied that he had been involved in the robbery at the church. Further, appellant's companions admitted in the juvenile court proceeding that they were tried and convicted on charges of robbery and larceny of the car, although they repudiated previous written confessions as to such charges. The court had before it the previous record

of appellant, including adjudications of delinquencies and appellant's probation record. While it is doubtful that prior records could, under settled rules of evidence, be used as the basis for an adjudication of delinquency, it is clear that the court could consider appellant's prior record in determining what treatment authorized under the Law would be in the best interests of the child and the state.

Even in ordinary civil litigation and trial, hearsay evidence, admitted without objection, if relevant and material, may be given the value of direct evidence. Poluski v. Glen Alden Coal Co., 286 Pa. 473, 133 A. 819; Sledzianowski Unemployment Compensation case, 168 Pa. Superior Ct. 37, 40, 76 A. 2d 666. Whatever may be the rule in ordinary litigation, all the rules of evidence cannot be applicable to the fullest extent in juvenile court proceedings. See 5 Wigmore, Evidence, § 1400 (3d Ed.). Such proceedings do not involve a trial, or criminal charges, and, in view of their primary purpose, must be conducted on a comparatively informal basis. Com. ex rel. Rogers v. Daven, 96 Pa. Superior Ct. 556, 560, 561. At the same time, the proceeding is an action in a court of record, the court must have jurisdiction, its basic findings must be supported by evidence and the rudiments of procedural due process and fair play must be observed. The record must be legally and factually adequate to sustain the findings of fact and order of commitment. Weintraub Appeal, 166 Pa. Superior Ct. 342, 351, 71 A. 2d 823. Within this framework the juvenile court is, under the law, granted broad discretionary power. The action of the juvenile court is always subject to appellate review and correction for errors of law or abuse of discretion. Rose Child Dependency Case, 161 Pa. Superior Ct. 204, 54 A. 2d 297.

It is contended that the court had no authority to commit the juvenile without notice to its parents, guardian, or person having control of the child. Under section 4 of the Law, 11 PS § 246, proceedings may be initiated by petition setting forth the fact the child is neglected, dependent, or

delinquent, or where a child is committed by a magistrate for violation of law. The petition must set forth also the names of the parent or guardian. The Law clearly contemplates that the parents, guardian, or person in control of the child shall receive notice of the proceeding. And as a rule it is an abuse of discretion for the court to enter into a hearing and make an adjudication without giving the persons having custody notice and an opportunity to be heard. Rose Child Dependency Case, supra, 161 Pa. Superior Ct. 204, 54 A. 2d 297. Holmes previously had been adjudged delinquent, and he was on probation and under the jurisdiction of the court when the order of commitment appealed from was made. Under the court's continuing jurisdiction, deferred committal was as much within the court's authority as immediate committal. Petition of Morin, supra, 95 N. H. 518, 68 A. 2d 668, 670. Presumptively, proper notice was given to appellant's parents at the time of the original delinquency adjudication. Moreover, there is evidence in the record showing that Holmes' mother had full notice of his repeated delinquencies and truancies, and that she was unable to properly control or discipline the child. We think it sufficiently appears that there was a compliance with the requirement of notice in this case. The court, in exercising its discretion, was not bound to accept the offer of appellant's uncle and aunt to furnish appellant with a suitable home, but, in view of appellant's conduct, could commit him to an institution for corrective training.

We have made reference to the fact that prior to the final hearing of March 6, 1953, appellant's attorney made a formal request by letter asking the right to inspect all the reports and recommendations made to the Juvenile Court concerning this minor, including the reports of probation and interviewing officers. The court allowed the attorney to inspect the notes of testimony and any statements made by the juvenile to court representatives, but denied the right to inspect any reports which the court con-

sidered confidential, including the reports of probation officers. Counsel now contends that on the minor's behalf he had a fundamental right to inspect all the court records, and that the action of the court in limiting the right of inspection was error. Section 3 of The Juvenile Court Law of 1933, as amended, 11 PS § 245, provides: "All sessions of the juvenile court shall be held separate and apart from sessions of the court held for the purpose of its general, criminal, and other business. The records of the proceedings of the juvenile courts shall be kept in a docket separate from all other proceedings of such courts, and shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parent or other representative of the person, institution, association or society concerned, and other persons having a legitimate interest." The word "record" in this section of the Law is used in its ordinary meaning to include the pleadings or petitions, docket entries, notes of testimony and order of the court. Neither the Commonwealth's file nor the reports of probation officers are ordinarily considered parts of the record in this sense. For the protection of the child, the Law provides that even the ordinary formal record, including the testimony, may be withheld from indiscriminate public inspection. The Commonwealth concedes that the ex parte reports of probation officers and other court employes could not properly form the basis for the adjudication of delinquency,[1] whatever effect such reports might be accorded by the court in its order providing for the care, guidance, and control of the child. See section 8 of the Law, as amended, 11 PS § 250, defining the powers of the court as to disposition of the child. We are of the opinion that neither appellant nor his attorney was deprived of any fundamental right to inspect the record of the proceedings in this case.

At the rehearing on March 6, 1953, granted appellant as a matter of right (section 15 of the Law, 11 PS § 257),

1 Cf. Com. ex rel. Mark v. Mark, 115 Pa. Superior Ct. 181, 182, 175 A. 289; Com. ex rel. McClenen v. McClenen, 127 Pa. Superior Ct. 471, 193 A. 83; Com. ex rel. Knode v. Knode, 145 Pa. Superior Ct. 1, 20 A. 2d 896.

the Commonwealth offered additional evidence to establish further delinquencies. Appellant contends it was error to allow the Commonwealth to introduce such evidence on rehearing. We decided in Weintraub Appeal, supra, 166 Pa. Superior Ct. 342, 351, 71 A. 2d 823, that on a rehearing under section 15 the Commonwealth was not obliged to produce evidence but could rely upon the record previously made. Having in mind the broad purpose of the Law, the rehearing granted under section 15 is general, and any relevant evidence may be offered by a proper party, although repetition is unnecessary. There was no error in allowing the introduction of additional evidence at the rehearing by the Commonwealth.

The order of the court below is affirmed.

OPINION OF THE MUNICIPAL COURT OF PHILADELPHIA, JUVENILE DIVISION.

The subject of this proceeding, Joseph Holmes, has been under the jurisdiction of the juvenile court of Philadelphia since August 19, 1949 when he was adjudged a delinquent and placed on probation. The following is a history of this case taken from the records of the juvenile court.

Joseph Holmes was born May 7, 1936. He first came to the attention of this court when a delinquency petition was filed against him on April 6, 1949 involving highway robbery. At a hearing on August 19, 1949 he was adjudged a delinquent and placed on probation. On January 5, 1951 he was arrested and charged with a delinquency involving a burglary. At a hearing held on January 19, 1951, the other boys involved exonerated Joseph Holmes and he was discharged as to this offense but his probation was continued.

From January 1951 to August, 1952 Joseph Holmes was not before us but in that time we received three letters from the Board of Education concerning him. One letter dated June 1, 1951 signed by Eugene A. Barrett, Supervisor, advised that Joseph had been absent fifty days since his probation was continued by Judge Millen on January 19, 1951 and over one hundred seventeen days during the school year. The letter concluded with the following statement: "We urge that you amend this case back to court and ask for placement in a suitable institution in order to prevent more serious delinquency."

We received another letter dated January 30, 1952. This letter stated: "We regret that we must report that Joseph's truancies continue and now total almost sixty days for the current school year. His mother seems disinterested and indifferent to her responsibility. We have been working with this case in co-operation with authoritative

agencies since 1948 and have noted little improvement in Joseph's obedience to state law . . . We recommend that the court be asked to place him, at its discretion, in an appropriate institution."

We received another letter on May 22, 1952. This letter stated: "On June 1, 1951 we wrote asking that the case be amended back to court because of his continued defiance to the State Law and because of indications that he might be engaged in other serious delinquency. On January 30, 1952 we again wrote repeating our request because Joseph had not improved in any way . . . We feel that this is a serious case and urge immediate consideration."

On August 18, 1952, Joseph Holmes was arrested on a delinquency involving highway robbery and assault and battery by fist. He and two other boys had assaulted a man and robbed him of $6.00. On September 10, 1952 we ordered him committed to Pennypack House, an institution for juveniles, for training with a request for a report in two months. On the basis of a letter signed by Raymond J. Groller, Acting Superintendent of the Department of Public Welfare recommending that Joseph be given another chance at home, on November 12, 1952, we ordered his discharge from Pennypack House on probation. From the time of his discharge he has neither worked nor attended school.

On December 23, 1952, Joseph Holmes was arrested as he was driving a stolen automobile. He was charged with a delinquency consisting of larceny of an automobile, operating without the consent of the owner and operating without a license. He was also implicated with three others in an armed robbery committed in the rectory of the Church of Our Lady of Victory, 54th and Vine Streets, in which the custodian was brutally beaten and robbed of $358.00.

Joseph Holmes was before us at a hearing on January 7, 1953 on these delinquencies. He admitted driving the stolen car, and that he had not been granted a driver's license but stated that one Benjamin Widman had given

him the car, which was a new Oldsmobile, and told him that it belonged to his uncle. He explained that he was driving the car after Widman's arrest, at the request of the arresting officers in order to park it. Even one blessed with the highest degree of naivete would be forced to disbelieve this story. At the conclusion of the hearing we ordered Holmes committed to the County Prison pending a hearing on the robbery charge. (It is to be noted here that we inadvertently used the words "we will mark him guilty on this charge" instead of "we adjudge him a delinquent"—such phrase was an unfortunate choice of words but it was intended and understood as an adjudication of delinquency).

On January 23, 1953 Holmes was before us on the delinquency charge involving the robbery. Holmes was implicated in the robbery by Widman and one Charles Clark, who were both convicted after a trial in the Court of Quarter Sessions. Detective Ashmore testified at the hearing before us that Widman after his arrest took the police to Holmes's residence after naming him as one of his accomplices. At the conclusion of the hearing we ordered Joseph Holmes committed to the Industrial School at White Hill on the basis of his present activities, of his past behavior, the failure of his parents and relatives to control him, and the fact that it was to his best interests to be specifically cared for and trained in an institution such as this.

On February 2, 1953, William J. Woolston, Esq., entered his appearance for Joseph Holmes and filed a petition for a rehearing which we granted. We also by letter of February 27, 1953 granted the attorney's request to inspect the notes of testimony and any statements made by the juvenile but refused access to any other records of this court.

The rehearing was held on March 6, 1953. In this proceeding both Widman and Clark testified that although they had been convicted they did not take part in the robbery at the rectory and that they were forced by the police to make the confessions they made, including the implication of

Joseph Holmes, and that actually Holmes was not with them. (This testimony, although improbable in view of these convictions, was of no effect relative to the juvenile). At the conclusion of the rehearing we reiterated our adjudication of delinquency and affirmed our prior commitment and ordered Holmes remanded to White Hill.

It must be stressed that Holmes had been adjudged a delinquent as far back as August 19, 1949 and had been continuously on probation since that time except for the period that he was confined at Pennypack House. An adjudication of delinquency is not merely a conviction for a particular offense. It establishes that a condition exists, namely, delinquency. There does not have to be a separate adjudication of delinquency for every future offense committed. The logic underlying this proposition is clearly recognized in the case Commonwealth v. Wink, 170 Pa. Superior 96, in which it was held that there can be no conviction for contributing to the delinquency of a minor unless it was established that the jurisdiction of the juvenile court had attached. Thus it is clear that an adjudication of delinquency established a status which can be made the basis for subsequent proceedings. This is also expressly recognized by the Juvenile Court Law, Act of June 1, 1933, P. L. 1433, sec. 12, 11 P.S. sec. 254 which provides that "all orders made by the several juvenile courts with respect to delinquent, neglected and dependent children shall, up to the time a child attains the age of twenty-one years, be subject to amendment, change or extension, by the judges thereof . . . When any child to whom the jurisdiction of the juvenile court has attached has been released on probation, such probation shall, at the discretion of the judge of the juvenile court, be taken to continue in full force and effect until such child attains the age of twenty-one years . . ." Thus, where the jurisdiction of the Municipal Court has attached and there has been an adjudication of delinquency, any subsequent proceedings do not have to be conducted with the formality necessary in a proceeding held for the

purpose of determining the status of delinquency even though it is incumbent upon the court to hear the matter thoroughly. To this end the court is entrusted with separating the legally admissible evidence from that which is not. Stripped of all extraneous matter there is here sufficient legally admissible evidence to demonstrate that a further delinquency, that of driving a stolen car without an operator's license, was committed by Joseph Holmes.

The next step in the proceeding involves the disposition of the juvenile himself. In Weintraub's Appeal, 166 Pa. Superior 342, 347 it was said: "Section 8 of the Act of 1933, as amended by Act of June 15, 1939, P. L. 394, sec. 1, 11 P.S. sec. 250 further provides that after hearing the judge may determine whether the best interests and welfare of a child and the State require the care, guidance, and control of such child, and shall make an order accordingly; and that the court may, inter alia, place the child on probation or commit it to some suitable institution or industrial school. This section clearly implies that there is some discretion to be exercised by the court as to what shall be done with a delinquent child." (underscoring supplied) In this sphere the court has at its disposal, and should use in arriving at a conclusion for the delinquent's best interests, the various studies and reports made by its probation and medical staff.*

This juvenile offender has been subject to our jurisdiction since August 19, 1949. While on probation his conduct was such that the school authorities on three separate occasions requested that an order placing him on probation be amended and that he be committed to a suitable institution with a solemn warning that there was serious danger inherent in permitting the probation to continue. While he was still on probation he committed an act of violence and

* Section three of the Juvenile Act gives parents and representatives, etc. the right to inspection of "the records of the proceedings of the juvenile courts". This court has always taken the position that parents, etc. may inspect the notes of testimony and any statements made to the court representative by the juvenile. All interviews, reports, etc. are of a confidential nature and are not open to inspection to anyone.

was committed to Pennypack House. After his release on probation he failed to return to school or to obtain employment. Only about one month later he was apprehended at the wheel of a stolen car and was implicated in an armed robbery of a very serious nature. His history follows a pattern only too common in this city, of a settled anti-social disposition leading to delinquencies which become progressively more serious.

We feel strongly that not only the interests of the state but the welfare of the offender himself requires that the probation be terminated and that he be committed to the Pennsylvania Industrial School at White Hill.

Counsel for the juvenile argues that a delinquent juvenile cannot be committed to an institution unless there is evidence that the parents or guardians are unable or unwilling to afford the required and requisite care. That of course is the law in a proceeding involving dependency—Rose Dependency Case, 161 Pa. Superior 204. It has no application in delinquency proceedings, particularly where the child is already subject to the jurisdiction of the court because he is on probation.

The majority of the arguments of counsel for the juvenile have been answered by the foregoing. We do not believe, for the purposes of this opinion, that it is necessary to answer the remaining ones except by saying that they are neither material to the issue nor are they in violation of the Juvenile Court Act Supra.

Joseph Holmes has been treated with patience and forbearance. He has had every opportunity to adjust himself and to become a law abiding individual. His parents have had every opportunity to assert discipline and to establish control but they have failed completely. The court has not abused its discretion by committing him to an industrial school for training and rehabilitation.

LEONARD MICHAEL PROPPER,
Judge.

EXCERPTS FROM NOTES OF TESTIMONY.

Philadelphia, Pa., Wednesday, January 7, 1953.

Before: HON. LEONARD MICHAEL PROPPER, *J.*

Present: STANLEY B. GOMBERG, ESQ., A. D. A., for the Commonwealth.

OFFICER KOZLOWSKI.

• • •

By MR. GOMBERG:

Q. All right, Officer Kozlowski, proceed.

A. About 9:30 P. M. on December 23rd, 1952, we observed Joseph Holmes here operating an Oldsmobile sedan, Pennsylvania license YG506, which was reported stolen. We apprehended them at 34th and Market Streets and these two other boys, James Simpson and John McCallum, were passengers in this automobile.

MARVIN CUTTLER.

• • •

By THE COURT:

Q. Mr. Cuttler?

A. Yes, sir.

• • •

Q. This was your car?

A. Yes, sir.

Q. You do not know who stole it?

A. No, I don't.

Q. You did not give any of these boys permission to either take it or drive it?

A. No, I didn't.

By THE COURT (To Joseph Holmes):

Q. All right, Joe, what about it?

A. The day the car was stolen I was home and Skeets——

Q. Who is Skeets?

A. Benjamin Wideman. He came to my house and wanted me to take a ride and I said, "Skeets, whose car is it?" and he said, "My uncle's." So he said, "come on down," and I came down and he said, "Get in"——

Q. Did he have a gun or a knife at your back?

A. He didn't have nothing. He just said, "Come on," and I said, "Where are you going?" and he said, "To Overbrook," and I said "O. K.," and we got down there and I said, "Skeets, you didn't steal this car, did you?"

Q. How did you suspect that?

A. Because Skeets doesn't have much money at times.

Q. Why didn't you suspect that at first?

A. (Not answered).

* * *

Q. You knew Skeets could not afford that kind of a car?

A. No, but he said it was his uncle's. So we went up Overbrook and Sulzberger and West Philly and then we came back, and the next morning he came around——

Q. Tell me something, Joseph, did Skeets pull that highway robbery in 1949 that you were involved in?

A. No, sir.

Q. Did he pull the burglary in January, 1951, that you were involved in?

A. No.

Q. On September 10th, 1952, did he pull that robbery?

A. No, sir.

MR. DAVIS: Isn't he presently involved in one?

OFFICER KOZLOWSKI: He is involved in the holdup of a church.

By THE COURT (To Joseph Holmes):

Q. Joe, I am sorry, I do not believe this Skeets business at all.

A. Skeets signed a confession that he stole the car.

Q. Do you have a license, Joe?

A. No.

Q. How did you happen to drive?

A. The cops locked Skeets up and Skeets told me to take it and park it.

By Mr. Davis:

Q. You told us that the police locked up Skeets.

A. Yes.

Q. And he told you to go around and park the car and you were around on Melon Street but you decided to take it to the station house?

A. No, sir.

By The Court (To John McCallum):

Q. McCallum, did you know this car was stolen?

A. No, sir.

Q. Honestly?

A. Honestly.

Q. How did you think Joe got a car like this?

A. He told me that Benjamin Wideman told him it was his uncle's car.

By The Court (To Mrs. McCallum):

Q. You are John's mother?

A. Yes.

Q. What kind of a boy is he?

A. Why, I have never had any trouble with him before. This is the first time he has ever been in any trouble.

By The Court (To John McCallum):

Q. John, I understand that you want to get in the Army; is that right?

A. Yes.

The Court: All right, I will let you go under our friendly service supervision, and get yourself in the Army.

John McCallum: Yes, sir.

By THE COURT (To James Simpson):

Q. James, I understand that the Army wants you.

A. I am already in the service.

Q. Where are you supposed to be?

A. I am home on furlough right now. January 9th my furlough is up.

THE COURT: Is that right?

MR. ALBARELLI: Yes, your Honor.

THE COURT: All right, good luck to you.

JOSEPH HOLMES: I am supposed to go in the Army, too, to the Air Force.

THE COURT: You are a cute fellow, Joe, but there is nothing I can do for you today. We are holding you until the other case comes up. We will mark him guilty on this charge. Hold him at County Prison pending the other hearing.

• • •

Philadelphia, Pa., Friday, January 23, 1953.

Before: HON. LEONARD MICHAEL PROPPER, *J.*

Present: STANLEY B. GOMBERG, ESQ., A. D. A., for the Commonwealth.

• • •

THE COURT: We know Joseph from a couple weeks ago. Joseph is the young gentleman who happened to be driving a car to the police station when he was picked up.

MR. DAVIS: That thought struck him afterwards.

By THE COURT (to Detective Ashmore, No. 58):

Q. All right, Detective.

A. Your Honor, on December 22, 1952, about 7:30 in the evening, Our Lady of Victory Church Rectory, located at 5412 Vine Street, was held up and robbed of $358 in

cash, and Frank Donovan here, who was in charge of collections at that time——

• • •

was assaulted and, as a result of our investigation, there were four men arrested. Two of the men in the case have been disposed of earlier in the week by Judge Bok. In regards to these two boys here, Holmes and Richard Hodges, one of the boys that was arrested here had given a signed confession and they implicated these two boys.

Q. You mean one of the adults gave a signed confession?

A. Yes. One was 18 and one was 23.

Q. They were adults.

A. In the statement of Widman, he signed a statement, and he says in the statement that on the 22nd day of December, 1952, from the highway at 2nd and Spring Garden Street he stole a 1949 Oldsmobile sedan and he took it to his home, where he went in and read for a period, and later went to 640 North 35th Street, where he picked up Joseph Holmes, and later on went to Haverford Avenue, between 34th and 36th, where he picked up Richard Hodges, and that they were in the neighborhood of the Sulzberger School for a couple hours and picked up a couple girls, and then came back to the vicinity of 36th and Wallace where he picked up Charles Clark and, from the statement of Widman, as Clark entered the automobile these two boys were present and he showed a .38, or what was supposed to have been a .38 gun and he said that they were to pull a job, and they went to the vicinity of the church, Our Lady of Victory Church, 54th and Vine Street, and, as they circled and passed the Church, Clark had pointed the rectory out where they were going to commit the holdup, and they decided they would park the automobile at 56th and Vine, which is a block and a half away, and, as Holmes and Clark got out of the automobile, Clark said to Widman that he wanted something to cover his face, and here is the black silk handkerchief that was supposed to have been used in the holdup——

Q. What did Hodges and Holmes actually do in the holdup?

A. According to the statement, Hodges remained in the car with Widman and Holmes and Clark went into the rectory and committed the holdup.

Q. The money obtained from the holdup, who got it?

A. The only part of the holdup I know was $150 went to Widman.

Q. These boys got nothing?

A. What they got I don't know. Widman took us to the residence of Holmes, where we arrested him on the highway and, as Holmes got in the automobile, he said, "What is this, Skeets?" and Skeets said, "You know what it is," and, in the presence of Hodges, Widman did implicate Holmes.

By Mr. Gomberg:

Q. Who is Skeets?

A. Widman.

By The Court (to Richard Hodges):

Q. All right, Richard, what about it? Did you know the car was stolen?

A. No, sir, I thought it was his uncle's.

Q. You thought it was whose uncle?

A. Skeet's uncle.

By The Court (to Joseph Holmes):

Q. What about it, Joseph?

A. He came to my house and picked me up. I had nothing to do with it.

Q. You were in on the robbery.

A. No. I haven't been identified by anybody. Skeets said he's going to tell you I had nothing to do with it.

Detective Ashmore: With regards to the automobile, from investigation, Widman and Holmes and Holmes and Benjamin Gordon, 3518 Wallace Street, drove up to the 42nd District, at 32nd and Lancaster,

in the stolen automobile to attend the hearing of Widman's brother, who was being arraigned that day for holdup at 838 South Street, which trial is going on now, and when we were going to take Widman into custody for the holdup Widman dropped the keys of the stolen automobile between Detective Arnold's seat——

THE COURT: I heard enough. Where are the parents of these boys?

MR. DAVIS: He denied it to us all along.

By MR. GOMBERG (to Detective Ashmore):

Q. Was the statement made in his presence? Was Widman's statement implicating Holmes made in the presence of Holmes?

A. No.

Q. Has he been identified at all?

A. No.

• • •

By THE COURT (To Joseph Holmes):

Q. Joseph, you have been before us too many times for me just to disregard this. Highway robbery in 1949, burglary in 1951, highway robbery in 1952, discharged from Pennypack House two months later, and now this.

A. I had nothing to do with it.

THE COURT: I am sending you to White Hill.

• • •

Philadelphia, Pa., Friday, March 6, 1953.

Before: HONORABLE LEONARD MICHAEL PROPPER, *J.*

Present: STANLEY B. GOMBERG, ESQ., A. D. A., for the Commonwealth;
WILLIAM J. WOOLSTON, ESQ., for Joseph Holmes.

THE COURT: Mr. Woolston, would you state your position, please?

MR. WOOLSTON: I petitioned for a re-hearing in this case for the following reasons; in addition to the former reasons, the following reasons I can specify because I have seen the notes of testimony: There is no evidence in the record that the parents were given notice of the first hearing or that the parents or guardians were present at the first hearing. There was no admissible evidence of delinquency in the first hearing. There was no evidence that the parents or guardians were unable or unwilling to afford the required and requisite care.

I would like to offer as exhibits in regard to the next motion three letters; a letter to Mr. Davis, which I will ask me marked "Exhibit A"; a letter in reply from Judge Propper to myself, which I will ask be marked "Exhibit B"; and a letter from me to Mr. Duggan, which I ask be marked "Exhibit C", in support of this motion.

(Copies of said letters are attached hereto and marked "Exhibit A, Exhibit B".)

Now, I wish to object to the fact that I was refused permission to see the record in this case other than the notes of testimony.

THE COURT: Objection overruled.

MR. WOOLSTON: Those are all my motions.

THE COURT: Now, what is your position today?

MR. WOOLSTON: I ask that the boy be discharged for those reasons.

THE COURT: Proceed, Mr. Gomberg.

MR. WOOLSTON: I object to any testimony by the State. The petition for re-hearing is ours. There is no right for the State to offer any evidence on a re-hearing except in rebuttal.

THE COURT: I want to state for the record that the Juvenile Court law in any Juvenile Court case allows the Commonwealth to put in evidence or not put in evidence as they desire. The Commonwealth will proceed.

MR. WOOLSTON: I offer those three exhibits into evidence now.

MR. GOMBERG: Benjamin Wideman.

• • •

THE COURT: Is it my understanding, Mr. Gomberg, that you are now merely limiting yourself to the establishment of a delinquency?

MR. GOMBERG: Yes, sir, of Joseph Holmes, and I am now directing my attention to that escapade of the delinquency concerning the theft of the automobile.

THE COURT: Go ahead.

• • •

By MR. GOMBERG:

• • •

Q. Do you remember on December 23rd, 1952, riding in an Oldsmobile sedan?

A. Yes, sir.

Q. With Joseph Holmes?

A. Yes, sir.

Q. Now, at what time of the day did Joseph Holmes meet you before you started riding in that Oldsmobile sedan?

A. About 10:30 or eleven o'clock—somewhere about noon time.

Q. And what conversation did you have with Joseph Holmes when you met him that day?

A. Well, I didn't have no conversation with him. First I picked up Richard Hodges and then I picked up Joseph Holmes and we went up to a few schools and came back and then Joseph Holmes and Richard Hodges got out of the car and I drove on home.

Q. Now, was that Oldsmobile car yours?

A. No, sir.

Q. Where did you get it?

A. At 2nd and Noble.

Q. At 2nd and Noble?

A. Yes, sir.

Q. Do you mean you stole it?

A. Yes, sir.

Q. Now, how long had you known Joseph Holmes?

A. Well, I have been knowing Joseph Holmes for a good while, ever since I had been living on 36th Street and that has been eight years.

* * *

Q. When you met Joseph Holmes did you have any conversation with him or did he ask you whose car it was?

A. Yes, he asked me whose car it was.

Q. And what did you tell him?

A. I told him it was my uncle's.

Q. You told him it was your uncle's car?

A. Yes.

Q. And did he ask you who your uncle was?

A. No, sir.

Q. Now, how long did you spend that day with him in the car?

A. In the car we rode around until about four o'clock and then they got out and I went on home.

Q. You saw them later that day though?

A. No, sir, I didn't see them. After they got out of the car I didn't see them no more that day.

Q. Now, in the course of that time did you ever tell him that it wasn't your uncle's car?

A. No, sir.

Q. Did you talk about the car at all?

A. No, sir, we didn't talk about the car.

Q. Now, as a matter of fact, you gave that car to Joseph to drive home, didn't you?

A. No, sir.

Q. Now, when were you arrested?

A. I was arrested the 23rd.

Q. Of December?

A. Yes, sir.

• • •

Q. I mean did you tell Joseph to take your car and park it when you were arrested?

A. No, sir.

Q. When you were arrested, what happened to the car, if you know.

• • •

A. The car was at the police station the last time I seen it and I was in jail then.

Q. Now, so far as you know, did Joseph Holmes ever drive that car?

A. No, sir, not as far as I know of.

MR. GOMBERG: Your Honor, that is all I have from Benjamin at this time concerning the theft of the automobile, and at this time I would like to reserve the right to call him back.

• • •

DETECTIVE GOLDEN.

* * *

By MR. GOMBERG:

Q. Now, will you describe the situation as a result of which you first came to know about this case involving Joseph Holmes?

A. At about 4 P. M. on Monday, December 22nd, 1952, a Marvin Cuttler, residence 5418 Arlington Street, came to the 6th Police District and reported to Patrolman Murray——

MR. WOOLSTON: I object to this hearsay evidence.

By MR. GOMBERG:

Q. As a result of what he told, what did you do?

A. As a result of this occurrence, an Oldsmobile sedan, Pennsylvania license YG506, was sent out as stolen from the 6th Police District. At about 9:30 P. M. on Tuesday, December 23rd, 1952, Patrolman Kozlowski, No. 1691, and McLaughlin, No. 1499, of the Motor Bandit Patrol, observed this automobile——

MR. WOOLSTON: I object.

By MR. GOMBERG:

Q. How do you know they observed it?

A. They told me as a result of my investigation.

Q. Now, when did you first see Joseph Holmes? Did you see him that day?

A. Yes, sir, I did.

Q. In whose company was he when you first saw him?

A. He was in the custody of Patrolmen Kozlowski and McLaughlin, who brought him to the 6th Police District.

Q. And did you see the Oldsmobile that day?

A. I didn't see the car personally, no.

Q. Did you talk to Joseph Holmes that day?

A. I interrogated Joseph Holmes at the 6th Police District at that time.

Q. In the course of your interrogation did you ask him where he had been arrested?

A. I learned that information from the patrolmen.

Q. Well, did you ask Joseph Holmes about it?

A. Yes, I believe I did. He verified what the officers had told me at the time.

Q. And where was he arrested?

A. He had been apprehended at 34th and Market Streets.

Q. And doing what?

MR. WOOLSTON: I object.

THE COURT: Objection overruled.

MR. WOOLSTON: I will ask for an exception.

THE COURT: Exception.

By MR. GOMBERG:

Q. Go on.

A. At the time the officers apprehended him he was operating the Oldsmobile in question on 34th Street.

MR. GOMBERG: That is all.

MR. WOOLSTON: I move that that last statement be stricken. It is clearly hearsay.

THE COURT: Now, do you want us to call the policemen to find out where he operated it? He admitted it.

MR. WOOLSTON: No, he won't admit it.

THE COURT: He has already admitted it. Mr. Woolston, I wish you would not confuse this with a criminal court where a jury sits.

MR. WOOLSTON: It is my contention that the rules of evidence apply here. I would be very glad to hand you a rather thorough brief of the law on it.

THE COURT: This is not a contest, as I said before. This is a court which is interested in the welfare of

juveniles and we just cannot in good conscience keep all the rules of evidence in this court and the Superior Court does not demand that we do.

• • •

BENJAMIN WIDEMAN, recalled.

DIRECT EXAMINATION.

By MR. GOMBERG:

Q. Now, Mr. Wideman, on the 22nd of December, in the evening of that day you were with Charles Clark, Joseph Holmes and Richard Hodges; is that right?

A. That's wrong.

Q. That is not true?

A. No.

Q. Now, did you drive near the Rectory of Our Lady of Victory Church at 54th and Vine?

A. No, sir.

Q. Were you in that vicinity at all that day?

A. No, sir.

Q. Were you in the company of Clark, Holmes or Hodges that evening?

A. No, sir.

Q. At all?

A. No, sir.

Q. Did you drive the Oldsmobile sedan that evening?

A. No, sir, I didn't drive it that evening.

• • •

Q. Mr. Wideman, did you ever tell anybody that you participated in that holdup in any way?

A. No, sir.

Q. Did you ever tell anybody that Holmes participated in it?

A. I was forced to in the police station.

Q. To what?

A. To make a confession.

• • •

MR. GOMBERG: What did he say just now?

THE COURT: He said he implicated Joseph Holmes at the station house because he said, "I was forced to," and then he said he did not say it at City Hall at the trial.

By MR. GOMBERG:

Q. Did you tell them at City Hall you were forced to do anything?

A. Yes.

Q. What did you tell them?

A. I told the Judge they used force and made me sign a confession, and then when I got to court they asked me was these boys in it and I told them no and they asked me was I forced to make this statement and I told them yes.

Q. Now, in that statement did you say that Joseph Holmes had participated in the robbery of the Rectory?

A. I said that at the station house, yes, sir.

Q. And you say today it isn't true?

A. Yes, sir.

Q. It isn't true?

A. Yes, sir.

Q. You mean yes, sir, it is not true?

A. Yes, sir.

By THE COURT:

Q. Now, you told the Court you were forced to say that?

A. Yes, sir.

* * *

THE COURT: That is all.

DETECTIVE ARNOLD.

By MR. GOMBERG:

Q. Were you at the trial of Benjamin Wideman?

A. Yes, sir.

Q. In City Hall?

A. Yes, I was.

• • •

Q. And did Wideman give any explanation concerning that confession?

A. Yes, the statement he just made. He told the Judge he was forced to say that he had participated in this crime.

Q. Were you present when the confession was taken?

A. I was.

Q. Was he forced?

A. Not at that time.

By THE COURT:

Q. Did he say on the stand that his implication of Holmes was forced upon him by the police?

A. He said it wasn't the truth.

By MR. GOMBERG:

Q. What wasn't the truth?

A. That Holmes had accompanied him.

By THE COURT:

Q. Did he say anything about Holmes driving the car, that is giving the car to Holmes?

A. Yes, he stated that Holmes had been in the car that day on the 22nd or 23rd.

By MR. GOMBERG:

Q. The 23rd?

A. Yes.

Q. Did he say whether or not he told Holmes that the car was stolen?

A. He didn't tell him it was stolen; he told him it was his uncle's car.

Q. That was his testimony in City Hall?
A. Yes.

By THE COURT:

Q. What did he say in his confession relative to Holmes' participation——

MR. WOOLSTON: I object unless it be shown that Holmes was present.

By THE COURT:

Q. What did he say in his confession relative to the participation of Holmes in the robbery?

A. In his confession that he signed he implicated these three other boys. That is how they were brought in.

• • •

By MR. GOMBERG:

Q. That is in his confession?
A. Yes.

By THE COURT:

Q. But he denied that?
A. Yes.

• • •

THE COURT: Is there anything further?

MR. GOMBERG: No.

THE COURT: Have you anything further, Mr. Woolston?

MR. WOOLSTON: I renew my motions.

THE COURT: I again adjudge him a delinquent for both his participation in the burglary and his driving around in a stolen car without a license while on probation. Now, let us look at his past record, and I shall read it: April, 1949, highway robbery, continued until further notice and then in August he was placed on probation and restitution; January 5, 1951, burglary, discharged as to this offense and probation continued; September, 1952, highway robbery, assault and battery

by fist, committed to Pennypack House, with report in two months; on 11-12-52 he was discharged from Pennypack House on probation; 1-7-53, larceny of auto, operating without owner's consent and operating without a license while he was on probation. Under all those circumstances and the fact that he was driving a stolen car without a license and the fact that there is a confession existant implicating him in a robbery and burglary and he was in the car when the burglary took place, any one of which warrants my adjudging him a delinquent, I will send him to White Hill.

MR. WOOLSTON: I object to the use of his past record for delinquency. Now, for the commitment, I would like to present a witness, please.

THE COURT: Commitments are entirely within the discretion of the Court, Mr. Woolston.

MR. WOOLSTON: I would like to present a witness. May I?

THE COURT: No, not for sentencing. Do you have an offer of proof as to the witness?

MR. WOOLSTON: Yes, I have here a Mr. and Mrs. Wynne, who are the boy's aunt and uncle and will provide a good and competent home in Philadelphia.

THE COURT: Has the home been seen by the Court?

MR. WOOLSTON: No.

THE COURT: I will take for granted they have a good home, but this is a matter of delinquency and I am remanding him to White Hill.

(Adjudged delinquent. Remanded to White Hill.)

Exhibit A.

February 25, 1953

Mr. Joseph Davis,
The Municipal Court of Philadelphia,
1801 Vine Street,
Philadelphia 3, Pa.

Re: Matter of Joseph Holmes
No. 85152; 85452

Dear Mr. Davis:

A rehearing has been scheduled for the above juvenile for Friday, March 6th.

I am the attorney of record for the minor in question.

In order that I may be fully prepared for the above-mentioned hearing, I desire prior to the hearing to inspect all the reports and recommendations of the various probation interviewing and other officers connected with the Juvenile Court which relate to the above-mentioned minor, and also the reports of the arresting officers and the Juvenile Aid Bureau.

I believe that by Section 3 of the Juvenile Act I have a right to inspect all such files prior to the hearing.

Will you please advise me when and where I make the above inspection?

Yours sincerely,

William J. Woolston

WJW:gsm

Exhibit B.

Municipal Court
of Philadelphia

February 27, 1953

William J. Woolston, Esq.
1529 Walnut Street,
Philadelphia 2, Pa.

Re: Matter of Joseph Holmes
No. 85152; 85452

Dear Mr. Woolston:

Your letter of February twenty-fifth, 1953 addressed to Mr. Joseph Davis of this court has been referred to me.

Section three of the Juvenile Act gives parents and representatives, etc. the right to inspection of "the records of the proceedings of the juvenile courts". This court has always taken the position that parents, etc. may inspect the notes of testimony and any statements made to the court representative by the juvenile. All interviews, reports, etc. are of a confidential nature and are not open to inspection to anyone.

In view of the foregoing you have the right to inspect the notes of testimony and any statements made by the juvenile but you do not have access to any other records of this court. I am forwarding a copy of this letter to Carroll J. Duggan who will make available to you the notes of testimony and the statements of Joseph Holmes.

Very truly yours,

LEONARD MICHAEL PROPPER
J.

LMP/dt

PERTINENT EXCERPTS FROM THE ACT OF 1933, JUNE 2, P. L. 1433, AS AMENDED BY THE ACT OF 1939, JUNE 15, P. L. 394, AND AS ALSO AMENDED BY THE ACT OF 1953, JULY 17 (11 P. S. 243).

Section 1

"Definitions

(1) The word 'court,' as used in this act, means the County or Juvenile Court in the County of Allegheny, the Municipal Court in the County of Philadelphia, and the court of quarter sessions in all other counties of this Commonwealth.

(2) The word 'child' as used in this act, means a minor under the age of eighteen years.

• • •

(4) The words 'delinquent child' include:

(a) A child who has violated any law of the Commonwealth or ordinance of any city, borough or township;

• • •

(c) A child who is habitually truant from school or home;"

• • •

Section 2

Jurisdiction of juvenile court

"Except as hereinafter provided, the several courts, as defined in this act, shall have and possess full and exclusive jurisdiction in (a) all proceedings affecting delinquent, neglected and dependent children;"

• • •

Section 3

Juvenile court sessions and records to be separate

"All sessions of the juvenile court shall be held separate and apart from sessions of the court held for the pur-

pose of its general, criminal, and other business. The records of the proceedings of the juvenile courts shall be kept in a docket separate from all other proceedings of such courts, and shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parent or other representative of the person, institution, association or society concerned, and other persons having a legitimate interest.

In all cases where a child is discharged on probation, or otherwise, from an institution, industrial or training school, a record of such discharge shall be kept in the juvenile court docket."

Section 4

Initiation of proceedings

* * *

"3. There shall be no preliminary hearings in any cases affecting dependent, delinquent or neglected children under the age of eighteen years."

Section 5

Jury trials

"Except as hereinafter provided, the court shall hear and determine all cases affecting children arising under the provisions of this act without a jury. If an adult coming before the court is charged with an offense for which he is entitled to a trial by jury, and if he shall so demand, the case shall be returned by the judge of the court to the proper court for trial."

Section 6

Preliminary orders; temporary custody of children

"Upon the filing of any petition as above set forth, or the commitment of a child by any magistrate, alderman or justice of the peace, the judge holding the juvenile court shall, if after preliminary inquiry he deems the same necessary, make all necessary orders for compelling the produc-

tion of such child, and the attendance of parents or other person or persons having the custody or control of the child, or with whom the child may be.

Pending the final disposition of any case, the child shall be subject to the order of the court, and * * * may be ordered by the court to be kept and maintained in some place provided by the county for such purposes."

Section 7

Certain commitments prohibited; special rooms for detention of children

"No child, pending or after hearing before the juvenile court, shall be confined in any county jail, workhouse, police station, lockup, or other institution in which adults are confined, or be placed in any court room during the trial of adults unless his or her presence be required in the persecution (sic) of adults upon order of the judge presiding at the trial of such adult or adults, or in any vehicle in company with adults charged with or convicted of crime."

* * *

Section 8

Hearing; court orders

"At the hearing, or any continuation thereof, the judge or judges shall, after an inquiry of the facts, determine whether the best interests and welfare of a child and the State require the care, guidance and control of such child, and shall make an order accordingly.

The court may——

* * *

(c) Commit a child to some suitable institution or to the care of an incorporated association or society, one of whose objects is the care, guidance and control of delinquent, dependent and neglected children, and which is willing to receive said child."

* * *

Section 11

Certain commitments prohibited

"It shall not be lawful to commit the care, guidance and control of any delinquent, neglected or dependent child, under the age of twelve years, to any industrial school or institution of correction, unless, after the care and oversight given such child under the probation system provided for by this act, the court finds that the best interests of the child and the welfare of the community require such commitment. It shall not be lawful to commit the custody of any neglected or dependent child, who is not delinquent to any institution of correction in which delinquent children are received."

Section 12

Amendment, change and extension of court orders

"All orders made by the several juvenile courts with respect to delinquent, neglected and dependent children shall, up to the time a child attains the age of twenty-one years, be subject to amendment, change or extension, by the judges thereof, upon motion of the district attorney or a probation officer, or upon petition of any other person in interest, after at least five (5) days' written noice has been give (sic) to both the district attorney and a probation officer. When any child to whom the jurisdiction of the juvenile court has attached has been released on probation, such probation shall, at the discretion of the judge of the juvenile court, be taken to continue in full force and effect until such child attains the age of twenty-one years, but this shall in no way affect his or her prosecution and conviction in a court of quarter sessions and the imposition of sentence by a judge or judges of that court."

Section 15

Rehearing and appeals where errors of law or fact are alleged.

"Within twenty-one (21) days after the final order of any judge of the juvenile court, committing or placing any

dependent, neglected or delinquent child, such child shall, as a matter of right, by his or her parent or parents or next friend, have the right to present to the court a petition to have his or her case or cases reviewed and reheard, if, in the opinion of such parent, parents, or next friend, an error of fact or of law, or of both, has been made in such proceedings or final order, or if the said order has been improvidently or inadvertently made.

Upon the presentation of such petition, the court shall grant such review and rehearing as a matter of right. The testimony at such reviews and rehearing shall be taken down and transcribed by an official court stenographer, which testimony shall be duly made a part of the record in such case. From the final order of such court, in proceedings for such rehearings and reviews, appeals shall lie as a matter of right to the Superior Court, upon the same terms and with the same regulations as are provided by law with respect to appeals from any decree of the orphans' court. In hearing such appeals, the Superior Court shall consider the testimony as a part of the record."

Section 19

Children before juvenile court not to acquire disabilities

"No order made by any juvenile court shall operate to impose any of the civil disabilities ordinarily imposed by the criminal laws of the Commonwealth, nor shall any child be deemed to be a criminal by reason of any such order or be deemed to have been convicted of crime. The disposition of a child or any evidence given in a juvenile court shall not be admissible as evidence against the child in any case or proceeding in any other court."

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI.

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 14, 1955.

/s/ HAROLD H. BURTON,
Associate Justice of the Supreme Court of the United States.

Dated this 10th day of February, 1955.